

## **TITLE VIII.**

### **PUBLIC HEALTH, SAFETY AND WELFARE**

(The purpose of this Title is to cover those ordinances pertaining to the preservation of the public health, safety and welfare through the prohibition of conduct inimical to the public good and through the promotion of policies aimed at the enhancement of living conditions in the community.)

#### **CHAPTER**

- 21 INTEGRATED SOLID WASTE MANAGEMENT
- 22 GENERAL PROVISIONS RELATING TO PUBLIC HEALTH,  
SAFETY AND WELFARE

#### **CHAPTER 21**

### **INTEGRATED SOLID WASTE MANAGEMENT**

(The purpose of this Chapter is to cover those ordinances designed to protect the public health by eliminating sources of disease producing conditions, and specifically to institute hygienic measures in garbage and rubbish disposal.)

- Article 1. General
  - Sec. 21-1.1 Purpose
  - Sec. 21-1.2 Applicability
  - Sec. 21-1.3 Definitions
  - Sec. 21-1.4 Scavenging Prohibited
  - Sec. 21-1.5 Rules For Implementation
  - Sec. 21-1.6 Penalty
- Article 2. Collection Of Solid Waste
  - Sec. 21-2.1 Receptacles
  - Sec. 21-2.2 Placement of Receptacles For Collection
  - Sec. 21-2.3 Collection
  - Sec. 21-2.4 Procedures Following Natural Disasters
- Article 3. Refuse Transfer Stations
  - Sec. 21-3.1 Authorized Users
  - Sec. 21-3.2 Materials Accepted
  - Sec. 21-3.3 Prohibited Materials
  - Sec. 21-3.4 Prohibited Activities
- Article 4. Debris Recycling Stations
  - Sec. 21-4.1 Authorized Users
  - Sec. 21-4.2 Materials Accepted
  - Sec. 21-4.3 Prohibited Activities
- Article 5. Temporary Emergency Debris Receiving Sites
  - Sec. 21-5.1 Establishment
  - Sec. 21-5.2 Authorized Users
  - Sec. 21-5.3 Materials Accepted
  - Sec. 21-5.4 Prohibited Activities
  - Sec. 21-5.5 Control of Hazards and Nuisances

- Article 6. Residential Drop-Off Recycling Centers
  - Sec. 21-6.1 Authorized Users
  - Sec. 21-6.2 Materials Accepted
  - Sec. 21-6.3 Prohibited Activities
- Article 7. Municipal Solid Waste Landfills
  - Sec. 21-7.1 Authorized Users
  - Sec. 21-7.2 Materials Accepted
  - Sec. 21-7.3 Prohibited Materials
- Article 8. Resource Exchange Facility (Reserved)
- Article 9. Fees For Collection And Disposal Of Solid Waste
  - Sec. 21-9.1 Fees For County Collection of Solid Waste
  - Sec. 21-9.2 Fees For Disposal of Solid Waste
  - Sec. 21-9.3 Delinquent Accounts
  - Sec. 21-9.4 Uncollectible Delinquent Accounts

## ARTICLE 1. GENERAL

### Sec. 21-1.1 Purpose.

The purpose of this Chapter is to establish minimum standards governing refuse collection services of the County of Kauai, and the handling, processing, disposal, recycling, reuse, and salvage of solid waste at refuse transfer stations, debris recycling stations, temporary emergency debris receiving sites, residential drop-off recycling centers, and landfills owned or operated by the County of Kauai, all within the context of an integrated solid waste management system.

Such standards are intended to:

- (1) Prevent pollution of the drinking water supply or waters of the State;
- (2) Prevent air pollution;
- (3) Prevent the spread of diseases and the creation of nuisances;
- (4) Protect the public health and safety;
- (5) Protect the health and safety of County employees and contractors;
- (6) Conserve natural resources and energy;
- (7) Conserve costly disposal capacity; and
- (8) Preserve and enhance the beauty and quality of the environment. (Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.1, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

### Sec. 21-1.2 Applicability.

This Chapter is applicable to all persons, as defined in this Chapter, who propose to or who actually deposit, handle, process, recycle, reuse, salvage, or dispose of solid waste of any kind in, on, or at a refuse transfer station, debris recycling station, temporary emergency debris receiving site, residential drop-off recycling center, or landfill owned or operated by the County of Kauai, or who set out trash

receptacles for collection by the County. (Ord. No. 706, August 6, 1996)

**Sec. 21-1.3 Definitions.**

The following terms shall have the meanings given below:

"Aggregates" means discarded concrete rubble, asphalt concrete, roofing tiles, and porcelain fixtures.

"Asbestos-Containing Materials" means asbestos-containing waste materials, Category I nonfriable asbestos-containing material, Category II nonfriable asbestos-containing material, and commercial asbestos as defined in 40 CFR Part 61.

"Benefitted Property" means real property on which there is a dwelling unit or place of business, which generates refuse, garbage or solid waste.

"Bimetallic Can" means any food or beverage container that is composed of steel with a tin coating.

"Bioconversion" means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or generate products including, but not limited to, fertilizers, feed, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a municipal solid waste landfill.

"Bulky Items" include large items of refuse, such as furniture, mattresses, bed springs, and other oversize items which would typically not fit into reusable or disposable containers.

"Business" means any individual proprietorship, partnership, corporation, association, joint venture or project which carries on commercial or industrial activity for gain or profit, including any hotel or hotel-apartment.

"Business, Industry, Governmental Agency, Educational Institution, or Other Nonresidential Self-Hauler" means any business, industry, governmental agency, educational institution, or other nonresidential entity acting in its own behalf without remuneration, which hauls solid waste resulting from its own activities or operations to a recycling, reuse, transfer, or disposal facility. For purposes of this chapter, a hauler shall be considered to be a business, industry, governmental agency, educational institution, or other nonresidential self-hauler if one or more of the following conditions exists:

(1) The vehicle used to haul solid waste bears commercial license plates, fleet license plates, or license plates of the state or federal government, including military license plates.

(2) The vehicle used to haul solid waste bears decals or other markings indicating that it is the property of or is used for a business, industry,

institution, state or federal government agency (including military), or other nonresidential entity.

"CFR" means Code of Federal Regulations.

"Collection Point" means a designated area for regular County collection services according to the requirements in Section 21-2.2.

"Commercial Solid Waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), greenwaste, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like mulch or soil amendment. This term includes the processing of organic and non-treated wood waste materials that can be used as soil amendment, planting mixes, mulches for horticultural and agricultural applications, landfill cover, and land reclamation. The process of composting under methods approved by the Hawaii Department of Health is a recycling activity. Land application of uncomposted organic solid waste shall not be considered an approved solid waste management activity except as a portion of the United States Department of Agriculture - Soil Conservation Service approved Land Improvement, Soil Stabilization or Reclamation Plan.

"Consumer Recyclables" means recyclable materials typically used by consumers or used to deliver products to consumers. Consumer recyclables include, but are not limited to, newsprint, corrugated cardboard, aluminum beverage containers, glass containers, bimetallic cans, junk mail and other mixed paper, and plastic containers.

"Corrugated Cardboard" means a paper product fabricated from two layers of kraft linerboard sandwiched around a corrugating medium.

"Debris Recycling Station" means a permanent facility designed and operated to receive, store, process, and transfer to recycling markets source-separated recyclable debris. Debris recycling stations are intended to enable the County to respond immediately to large quantities of debris generated by natural disasters.

"Department" means the Department of Public Works of the County of Kauai.

"Director of Finance" means the Director of Finance of the County of Kauai.

"Disposal" means the management of solid waste through incineration or landfilling at permitted solid waste facilities.

"Disposal Facility" means a solid waste management facility or part of one at which solid waste is intentionally placed into or on any land or water, and at which solid waste will remain after closure.

"Division" means the Division of Highway Construction and Maintenance of the Department of Public Works of the County of Kauai.

"Dwelling" means any building or portion thereof which contains not more than two (2) dwelling units.

"Dwelling Unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by Kauai County Building Code, for not more than one family.

"Engineer" means the County Engineer of the Department of Public Works of the County of Kauai or the County Engineer's authorized representative.

"Ferrous Metal Object" means any large object made predominantly of iron or steel that has an iron content sufficient for magnetic separation, including, but not limited to, bicycles, lawn mowers, metal furniture, metal cabinets, power tools and machinery, sheet metal roofing, steel drums and tanks, iron pipe, and structural steel.

"Garbage" includes, but is not limited to, putrescible solid waste including animal and vegetable wastes resulting from the handling, storage, sale, preparation, cooking, or serving of food. Garbage originates primarily in home kitchens, stores, markets, restaurants, and other places where food is stored, prepared, or served.

"Greenwaste" means leaves, garden residues, shrubbery and tree trimmings, stumps, grass clippings, and other plant materials.

"Gypsum Wallboard" means wallboard, sometimes referred to as sheetrock, used in the construction of interior walls of buildings, with gypsum as the primary component. Gypsum wallboard shall be free of corner beads, wood, and plastic vapor barrier.

"Hazardous Waste" means regulated hazardous waste as defined in 40 CFR 261 or the State of Hawaii's rules or statutes, whichever is more stringent.

"Hotel or Hotel-Apartment" means an establishment operating under a license issued pursuant to the provisions of HRS Chapter 445-92, as amended.

"Household Hazardous Waste" means those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed of, or otherwise managed.

"Incineration" means the destruction of solid waste by burning in a furnace designed for that purpose, where solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

"Infectious Waste" means any waste which may contain pathogens capable of causing an infectious disease, and shall include, but not be limited to, wastes categorized in section 11-104-4 of the Hawaii Administrative Rules.

"Integrated Solid Waste Management" means the use of a variety of waste management practices and processing methods to safely and effectively manage solid waste with the least adverse impact on human health and the environment.

"Landfill" means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

"Landfilling" means the permitted disposal of solid waste on land in a series of compacted layers and covering the solid waste with soil or other materials.

"Liquid Waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

"Medical Waste" means all the infectious and injurious waste originating from a medical, veterinary, or intermediate care facility.

"Mixed Construction and Demolition Debris" means debris resulting from the construction or demolition of buildings or other structures and site clearing, which contains two or more of the following components: wood debris, gypsum wallboard, aggregates, ferrous metal, and non-ferrous metal.

"Mixed Paper" means discarded paper products that are composed of two or more types of paper, including newspaper, corrugated cardboard, office paper, computer paper, white paper, and coated paper stock.

"Municipal Solid Waste (MSW)" means solid waste refuse or garbage, originating from residential, business and institutional sources and uses which is appropriate for disposal in a permitted sanitary landfill.

"Non-Ferrous Metal Object" means any large metal object containing primarily metals other than iron and steel, including, but not limited to, aluminum or copper gutters, aluminum window frames, aluminum roofing shakes, and copper pipe.

"Open Burning" means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion;
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- (3) Control of the emission of the combustion products.

"Owner" means the last known record owner of real property containing a dwelling unit or place of business.

"Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

"Processing" means any technology used for the purpose of reducing the volume or weight, or both, of solid wastes, or any technology used to convert part or all of solid wastes for reuse.

"Putrescible Waste" means solid waste which contains material capable of being decomposed by micro-organisms.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Refuse" means anything putrescible or non-putrescible that is discarded or rejected.

"Refuse Transfer Station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste disposal facility. Refuse transfer stations may also include recycling activities.

"Residence" means dwelling unit, single family or multi-family, used for primary residence or as a rental. Includes Additional Dwelling Units, apartments and residential condominiums.

"Residential Drop-Off Recycling Center" means a structure, site, or container for collection and small-scale (low technology) segregation of household recyclables. The staffed or unstaffed center will receive and temporarily store household recyclables "dropped off" and no payment is made to the participants depositing recyclables.

"Residential Self-Hauler" means a resident of Kauai acting in his/her own behalf or on behalf of another resident without remuneration, who hauls solid waste from a residence to a recycling, reuse, transfer, or disposal facility.

"Scavenging" means the removal of materials at a solid waste facility or site without the approval of the owner or operator and the Hawaii Department of Health.

"Sewage Sludge" means residual solids and semisolids resulting from the treatment of wastewater. This term does not include wastewater effluent discharged from wastewater treatment processes.

"Site Controller" means the County employee or contractor stationed at the solid waste facility to direct disposal of incoming solid waste.

"Solid Waste" or "Municipal Solid Waste" means garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sewage or other substances in water

sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants.

"Solid Waste Management" means the entire process, or any part thereof, of storage, collection, transportation, transfer, processing, and disposal of solid wastes by any person engaging in these processes.

"Solid Waste Stream" means the total flow of solid waste from all waste generators or any segment thereof, that must be processed or disposed of.

"Source Reduction" means the design, manufacture and use of materials to:

(1) Minimize the quantity or toxicity, or both, of the waste produced; and

(2) Reduce the creation of waste either by redesigning products or by otherwise changing societal patterns of consumption, use, or waste generation.

"Source Separation" means dividing solid waste into some or all of its component parts at the point of generation.

"Special Wastes" means used tires, asbestos-containing materials, white goods, and dead animals (except those disposed of by the Kauai Humane Society), and any mixed waste containing used tires, asbestos-containing materials, white goods, or dead animals. These wastes are defined as "special" because they require special handling or processing by the County to comply with federal and state regulations.

"Temporary Emergency Debris Receiving Site" means a site used, with emergency authorization from the Hawaii Department of Health, on a temporary basis for the storage, processing, and transfer of debris resulting from a natural disaster declared by the President of the United States or the Governor of the State of Hawaii.

"White Goods" include electrical and mechanical enamel-coated major appliances made primarily of metal parts such as refrigerators, stoves, microwave ovens, dishwashers, ice makers, water heaters, and clothes washers and dryers.

"Wood Debris" means scrap dimensional lumber and plywood, doors, windows with wood frames, wood cabinets, all-wood furniture, wood shakes, and other items made of wood. May contain small quantities of other materials such as nails, hinges, glass, and wire. (Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.2, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

#### **Sec. 21-1.4 Scavenging Prohibited.**

Scavenging is prohibited at all County solid waste facilities, including refuse transfer stations, debris recycling stations, residential drop-off recycling centers, temporary emergency debris receiving sites, and landfills. (Ord. No. 706, August 6, 1996)



**Sec. 21-1.5 Rules For Implementation.**

The Department of Public Works may adopt rules necessary for the purposes of this Chapter. (Ord. No. 706, August 6, 1996)

**Sec. 21-1.6 Penalty.**

Any person violating any provision of this Chapter shall be punished by a fine not exceeding one thousand dollars (\$1,000) per offense. The violator shall also pay the costs of any cleanup incurred by the County or any other costs of remedying the violation. A separate offense is committed on each day during or on which a violation occurs or continues. (Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

**ARTICLE 2. COLLECTION OF SOLID WASTE**

**Sec. 21-2.1 Receptacles.**

(a) Requirements. Any person using or occupying any building, house or structure within the County shall provide and maintain in good order and repair refuse receptacles of sufficient number to contain the refuse that will accumulate on the premises for the duration between regularly scheduled collections.

(b) Removal of contents. It shall be the duty of every owner of a refuse receptacle to remove or to have removed the contents of the same in accordance with this Chapter at least once a week.

(c) Unauthorized removal of refuse from containers. It shall be unlawful for any person other than a duly authorized representative of the County to collect or remove any refuse from refuse receptacles used in the regular County collection service.

(d) Specifications. Receptacles used for storage of refuse materials shall be watertight and meet the following specifications:

(1) Trash cans of a durable grade of galvanized metal, plastic, or other suitable material approved by the County Engineer, from twenty to thirty-two gallons capacity. The receptacle shall have a top diameter not less than two inches (2") greater than the bottom diameter. They shall be provided with two lifting handles on opposite sides and a tightly fitting cover with a lifting handle. The receptacle shall be without inside protrusions, and the refuse shall be loosely packed so that the contents shall discharge freely when the receptacle is inverted. The maximum weight of any container, including trash, shall not exceed seventy-five (75) pounds.

(e) Damaged or deteriorated receptacles. No person shall use any receptacle which has deteriorated or has been damaged to the extent that the covers do not fit securely, or

that has jagged or sharp edges capable of causing injury to refuse collectors or any other person whose duty is to handle said receptacle. (Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.3, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

**Sec. 21-2.2 Placement of Receptacles For Collection.**

(a) All receptacles containing refuse and all refuse prepared for collection shall be placed for collection on or within the premises to be served, not more than twenty (20) feet from the public highway or public street, provided, that in business districts not having a yard, containers may be placed, during the hours of collection only, on the sidewalk or shoulder area of the public highway or public street closest to the premises. However, the County Engineer may waive this requirement of twenty (20) feet from a public highway or public street in order to alleviate severe hardship to individual homeowners, taking into consideration the width, distance and availability of turnaround area on private roads.

When the public right-of-way becomes impassable because of inclement weather or other unusual conditions, the County Engineer may notify residents to place refuse receptacles at the nearest collection point which is accessible to refuse removal vehicles.

(b) Placing refuse in receptacles. Refuse that is mixed with water or other liquids shall be drained before being placed in a refuse receptacle. Animal matter that is subject to decomposition shall be wrapped in paper or other biodegradable material before being placed in a refuse receptacle. Grease in a free-flowing state shall be reduced to a solid. Hypodermic needles shall be sealed in a sturdy plastic or other container resistant to breakage (such as a liquid laundry detergent bottle), along with a strong solution of household bleach to provide sterilizing action.

(c) Placing refuse, brush, cuttings for collection. If refuse is of such a nature that it cannot be placed in the required refuse receptacles, it shall be placed beside the refuse receptacle in bundles weighing less than fifty (50) pounds. Refuse such as paper cartons or wood boxes that cannot be placed in a receptacle shall be prepared for collection by placing the smaller cartons and boxes in the larger cartons and boxes until the larger cartons and boxes are completely filled. After the large cartons and boxes are completely filled, they shall be securely tied. Cartons and boxes shall not be larger than thirty-six (36) inches so they can be placed in regular collection trucks. Plastic refuse bags may be utilized for refuse collection.

Brush, long stems of bushes, tree limbs and cuttings shall be cut into three foot (3') lengths and tied securely into bundles weighing not more than fifty (50) pounds. All brush shall be collected from the regular collection point, brush adjacent to the public right-of-way shall be placed so

it does not in any way block or hinder passage of, or cause damage to, vehicles. No more than a combined total of one (1) cubic yard in volume of hedge cuttings, stumps, branches and other similar substances shall be placed for collection at one time.

(d) **RESTRICTED ITEMS FOR COLLECTION** Certain matter not to be placed in collection receptacles are as follows: dead animals, animal feces, materials impregnated with animal urine, poisons, explosives, dangerous or corrosive chemicals, or other toxic or hazardous materials, clothing taken from persons with infectious diseases or other medical waste, heavy metals or metal parts, lumber, dirt, rocks, bricks, concrete blocks, tires, crates and other refuse from construction or remodeling, used motor oil or automobile batteries, shall not be placed in receptacles used for regular collection service.

(e) Removal and disposal of restricted items; it shall be the obligation of the owner or occupant to remove and dispose, at his own expense, any and all items which are prohibited in regular collection. It shall be the obligation of the owner or occupant to contact the County Department of Public Works for instructions on the proper removal and disposal of such items.

(f) Unauthorized use of receptacles; it shall be unlawful for any person to place or permit another to place any refuse in a receptacle unless the refuse is from the premises served by the receptacle. It shall be unlawful for any person to place or permit another to place any refuse or receptacle at a collection point unless such refuse or receptacle are from the premises designated to the collection point.

The owner or occupant of any building, house, structure or land shall cause to be removed, at his own expense, all refuse items which due to the use of improper containers or the actions of dogs or other animals have become scattered and which are located, stored or deposited on the property or on the public right-of-way adjacent to the property. The existence of refuse or item(s) on the property or the adjacent public right-of-way shall be prima facie evidence that such owner or occupant failed to remove, as provided by this Chapter, the refuse or item(s) so stored or located thereon. Removal shall be within three (3) days of the County Engineer's notice. In the event that such items are prohibited from regular collection services, removal and disposal shall be as provided in paragraph "(e)" of this section.

(g) Supervision of receptacles; notice to Department of Public Works of failure to empty receptacles. In the event that refuse receptacles are not emptied or serviced, or refuse not removed by the County or another duly authorized person on the regularly scheduled collection day, the owner, manager, occupant, tenant or lessee of the subject house or building shall notify the Department of Public Works of that fact within three (3) days. (Ord. No. 91, March 2, 1955; Sec. 21,

C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.4, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

**Sec. 21-2.3 Collection.**

(a) Establishment of services. The County Engineer is authorized to establish regular collection service for removal of refuse.

Collections will not be made from inside structures or enclosures unless approved by the Department of Public Works. Grass cuttings, bundles of hedge cuttings, etc. must be placed adjacent to the public right-of-way as designated in Sec. 21-2.2(a) to be eligible to be picked up.

(b) Removal of bulky items. The regular collection service shall not remove items such as: tires, crates, white goods, sofas, chairs, pipe, auto parts weighing more than five pounds, mufflers, tree limbs greater than three feet in length, trees and shrubbery cuttings and other like items with a combined volume of more than one (1) cubic yard. The owner or occupant of any building, house, structure, land or benefitted property is responsible for the removal and disposal of these prohibited items at a County refuse transfer station, landfill, recycling facility or other approved disposal area at his own expense.

(c) Frequency of regular collection service. Regular County collection service shall be provided once per week for the protection of public health and the control of flies, insects and rodents on regularly scheduled days as established by the Department of Public Works.

(d) Charges for unusual locations, types and accumulations. Installations with unusual locations, types or accumulations of refuse may be serviced by the Department of Public Works provided that such service is within the capabilities of the Department. Charges for such collection and disposal may be established by the County Engineer based on actual costs.

(e) Parking interfering with containers. It shall be unlawful for any person to park a vehicle of any nature within six (6) feet of any container used in the County container collection service in such a manner which would interfere with the removal of refuse from such container or block the approach to such container. (Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.5, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

**Sec. 21-2.4 Procedures Following Natural Disasters.**

Following a natural disaster declared by the Governor of the State of Hawaii or the President of the United States, and upon authorization of emergency funding, the County Engineer may authorize collection of source-separated debris in residential areas. Dates of collection in the various areas

of the County shall be publicized to the greatest extent possible.

Disaster debris shall be separated into the following categories and placed in discrete piles within twenty feet of the nearest public road or street: (1) greenwaste, (2) scrap ferrous and non-ferrous metals, (3) mixed construction and demolition debris and any other category that the County Engineer deems necessary for the disposal of disaster related debris. Debris shall not be placed on or near utility poles, water meters, or mailboxes. Debris shall be placed for collection only on the date(s) specified for collection in any area. Any person having debris to be disposed of after announced collection dates shall deliver the debris or cause the debris to be delivered to a recycling or disposal facility. No disaster debris shall be deposited on a public highway, public park, public field, vacant lot, or other unauthorized location. (Ord. No. 706, August 6, 1996)

### **ARTICLE 3. REFUSE TRANSFER STATIONS**

#### **Sec. 21-3.1 Authorized Users.**

County refuse transfer stations may be used by County refuse collection vehicles; by residential self-haulers in automobiles, pickup trucks, vans and trailers up to and including three quarter (3/4) ton capacity; and by business, industry, governmental agency, educational institution, or other nonresidential self-haulers in automobiles, pickup trucks, vans and trailers up to and including three quarter (3/4) ton capacity. Authorized users of refuse transfer stations shall follow directions given by the site controller. (Ord. No. 706, August 6, 1996)

#### **Sec. 21-3.2 Materials Accepted.**

Refuse transfer stations shall accept garbage and refuse for transfer to disposal facilities. Upon determination by the County Engineer that sufficient space and personnel are available, that other conditions such as proximity of residences and topography are suitable, that funds are available to pay for processing and removal, and that the facility permit from the Department of Health allows, the Department of Public Works may also accept the following source-separated materials at refuse transfer stations, for disposition by such means as will maximize reuse, recycling, and bioconversion, and minimize waste disposal:

- (a) Consumer recyclables, provided that the County Engineer shall determine which materials are to be accepted;
- (b) Ferrous metal objects, non-ferrous metal objects, and white goods from residential self-haulers only;
- (c) Greenwaste;
- (d) Junk motor vehicles not registered to a business, industrial, governmental agency, educational institution, or other nonresidential entity, provided gasoline, oil, and

batteries are removed prior to delivery to the refuse transfer station;

(e) Used motor oil, only from residents with used motor oil from their own private non-commercial motor vehicles; and

(f) Used passenger car and light truck tires from residential self-haulers only. (Ord. No. 706, August 6, 1996)

**Sec. 21-3.3 Prohibited Materials.**

The following materials shall not be accepted or temporarily stored at refuse transfer stations:

(a) Ashes;

(b) Bulky items and construction and demolition debris greater than three (3) feet in any dimension;

(c) Animal carcasses, parts or innards; animal feces; liquid waste; medical waste which has not been rendered non-infectious through sterilization; and used large truck and heavy equipment tires;

(d) Explosives;

(e) Pressurized containers; and

(f) Toxic and hazardous wastes. (Ord. No. 706, August 6, 1996)

**Sec. 21-3.4 Prohibited Activities.**

Burial (temporary or permanent) and open burning of solid waste are prohibited at refuse transfer stations. Any person who deposits any prohibited material at a refuse transfer station or on a public highway or street adjacent to a refuse transfer station shall be responsible for removing such material from such refuse transfer station or adjacent public highway or street to a permitted disposal or recycling facility and shall be subject to the penalties as provided in this Chapter. (Ord. No. 706, August 6, 1996)

**ARTICLE 4. DEBRIS RECYCLING STATIONS**

**Sec. 21-4.1 Authorized Users.**

Any person as defined in this Chapter may deliver acceptable materials to debris recycling stations. There shall be no size limitation on vehicles delivering materials to debris recycling stations. Authorized users of debris recycling stations shall follow directions given by the site controller. (Ord. No. 706, August 6, 1996)

**Sec. 21-4.2 Materials Accepted.**

Upon determination by the County Engineer that sufficient space and personnel are available, that other conditions such as proximity of residences and topography are suitable, that funds are available to pay for processing and removal, and that the facility permit from the Department of Health allows, the Department of Public Works may accept the following source-separated materials at the debris recycling stations, for disposition by such means as will maximize reuse,

recycling, and bioconversion, and minimize waste disposal. Materials of each type shall be separated at the source prior to delivery to the debris recycling station. All other materials are prohibited at debris recycling stations.

- (a) Aggregates;
- (b) Ferrous and non-ferrous metal objects;
- (c) Greenwaste;
- (d) Gypsum wallboard;
- (e) Mixed construction and demolition debris;
- (f) White goods; and
- (g) Wood debris. (Ord. No. 706, August 6, 1996)

**Sec. 21-4.3 Special Exceptions.**

Special cases, such as following a natural disaster, which may deem the amendment of such facility's use to be in the best interest of the County, the County Engineer may limit materials accepted at debris recycling stations to materials directly related to the natural disaster or increase the list of acceptable items. (Ord. No. 706, August 6, 1996)

**Sec. 21-4.4 Prohibited Activities.**

Burial (temporary or permanent) and open burning of solid waste are prohibited at debris recycling stations. No prohibited material shall be accepted or temporarily stored at debris recycling stations. Any person who deposits any prohibited material at a debris recycling station or on a public highway or street adjacent to a debris recycling station shall be responsible for removing such material from such debris recycling station or adjacent public highway or street to a permitted disposal or recycling facility and shall be subject to the penalties as provided in this Chapter. (Ord. No. 706, August 6, 1996)

**ARTICLE 5. TEMPORARY EMERGENCY DEBRIS RECEIVING SITES**

**Sec. 21-5.1 Establishment.**

Temporary emergency debris receiving sites may be established as needed by the Department of Public Works in areas not adequately served by debris recycling stations. Temporary emergency debris receiving sites may be established only after a catastrophic natural disaster resulting in a disaster declaration by the Governor of the State of Hawaii or the President of the United States. Such sites shall be established only upon written authorization from the Hawaii Department of Health, except that if written communication is not possible immediately following the disaster, documented verbal authorization may be obtained until such time as written communication is possible. (Ord. No. 706, August 6, 1996)

**Sec. 21-5.2 Authorized Users.**

Any person as defined in this Chapter may deliver solid waste to a temporary emergency debris receiving site. There shall be no size limitation on vehicles delivering materials to temporary emergency debris receiving sites. Authorized users of temporary emergency debris receiving sites shall follow directions given by the site controller. (Ord. No. 706, August 6, 1996)

**Sec. 21-5.3 Materials Accepted.**

Only the materials listed below shall be accepted at temporary emergency debris receiving sites, for disposition by such means as will maximize reuse, recycling, and bioconversion, and minimize waste disposal. Any materials accepted at temporary emergency debris receiving sites shall be directly related to the declared emergency which resulted in establishment of the temporary emergency debris receiving sites. Materials of each type shall be segregated at the source prior to delivery to the temporary emergency debris receiving site. Any material not listed as acceptable in this section is prohibited at temporary emergency debris receiving sites.

- (a) Aggregates;
- (b) Bulky items;
- (c) Ferrous and non-ferrous metals;
- (d) Greenwaste;
- (e) Gypsum wallboard;
- (f) Mixed construction and demolition debris;
- (g) Plastic sheeting and other plastic items;
- (h) White goods; and
- (i) Wood debris;
- (j) Garbage and refuse may be accepted at temporary emergency debris receiving sites only if one of the following conditions exists:

(1) The Hawaii Department of Health has provided written authorization to bury and/or burn solid waste at the temporary emergency debris receiving sites; or

(2) The Department of Public Works contracts for the placement of refuse containers to receive garbage and refuse at the temporary emergency debris receiving sites.

(Ord. No. 706, August 6, 1996)

**Sec. 21-5.4 Prohibited Materials.**

Materials, such as but not limited to the following, shall not be accepted or temporarily stored at Temporary Emergency Debris Receiving Sites:

- (a) Ashes;
- (b) Explosives;
- (c) Toxic and hazardous wastes. (Ord. No. 706, August 6, 1996)



**Sec. 21-5.5 Prohibited Activities.**

No solid waste shall be buried (temporarily or permanently) or burned at temporary emergency debris receiving sites without written authorization from the Hawaii Department of Health. No solid waste, with the exception of putrescible waste, shall be buried at temporary emergency debris receiving sites. No prohibited material shall be accepted or temporarily stored at temporary emergency debris receiving sites. Any person who deposits any prohibited material at a temporary emergency debris receiving site or on a public highway or street adjacent to a temporary emergency debris receiving site shall be responsible for removing such material from such temporary emergency debris receiving site or adjacent public highway or street to a permitted disposal or recycling facility and shall be subject to the penalties as provided in this Chapter. (Ord. No. 706, August 6, 1996)

**Sec. 21-5.6 Control of Hazards and Nuisances.**

The Department of Public Works may implement and continue throughout the life of any temporary emergency debris receiving site, measures acceptable to the Hawaii Department of Health to control rodents and other vectors, prevent fires, prevent wind-blown litter, prevent scavenging, exclude hazardous wastes, and prevent blowing of stockpiled debris in a tropical storm or hurricane. (Ord. No. 706, August 6, 1996)

**ARTICLE 6. RESIDENTIAL DROP-OFF RECYCLING CENTERS****Sec. 21-6.1 Authorized Users and Materials.**

Residential drop-off recycling centers shall be used only by residential self-haulers. (Ord. No. 706, August 6, 1996)

**Sec. 21-6.2 Materials Accepted.**

Only consumer recyclables may be deposited at a residential drop-off recycling center. The County Engineer shall determine the materials to be accepted. Residential self-haulers and visitors shall comply with printed instructions at the residential drop-off recycling centers regarding the types of materials which are accepted, correct preparation of such materials for recycling, and types of materials which are not accepted. (Ord. No. 706, August 6, 1996)

**Sec. 21-6.3 Prohibited Activities.**

No person shall deposit refuse in or around a residential drop-off recycling center. Consumer recyclables deposited at a residential drop-off recycling center become the property of the County or its contractor and shall not be removed from the premises occupied by the residential drop-off recycling center except by the County or its authorized contractor. No person shall deposit any materials resulting from a business, commercial, industrial, or other nonresidential activity at a

residential drop-off recycling center and shall be subject to the penalties as provided in this Chapter. (Ord. No. 706, August 6, 1996)

## **ARTICLE 7. LANDFILLS**

### **Sec. 21-7.1 Authorized Users.**

Any person as defined in this Chapter may deliver solid waste to a County landfill. There shall be no size limitation on vehicles delivering materials to landfills. Authorized users of landfills shall follow directions given by the site controller. (Ord. No. 706, August 6, 1996)

### **Sec. 21-7.2 Materials Accepted.**

Any municipal solid waste, except those materials prohibited by Section 21-7.3 may be deposited in a County landfill. Sewage sludge shall be accepted only if it is determined not to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846). (Ord. No. 706, August 6, 1996)

### **Sec. 21-7.3 Prohibited Materials.**

The following materials shall not be accepted or disposed of at a County landfill:

- (a) Corrugated cardboard from business, industrial, governmental, institutional, and other nonresidential sources;
- (b) Ferrous and non-ferrous metal objects from business, industrial, governmental, institutional, and other nonresidential sources;
- (c) Loads from business, industrial, governmental, institutional, and other nonresidential sources exceeding twenty percent (20%) greenwaste;
- (d) Liquid waste, except small quantities of liquids from residential sources in containers of types and sizes typically used in residential environments;
- (e) Medical waste which has not been rendered non-infectious through sterilization.
- (f) Motor vehicles and automotive-type batteries;
- (g) Toxic and hazardous wastes;
- (h) Used motor vehicle and heavy equipment tires, whether whole, cut, sliced, chipped, or shredded; and
- (i) White goods.

Notwithstanding any provision to the contrary, the County Engineer may approve the use of county-owned tires whether chipped, chopped or shredded for daily landfill cover, provided the State Department of Health permits said use. (Ord. No. 706, August 6, 1996; Ord. No. 725, May 13, 1998)

**ARTICLE 8: RESOURCE EXCHANGE FACILITY (RESERVED)****ARTICLE 9. FEES FOR COLLECTION AND DISPOSAL OF SOLID WASTE****Sec. 21-9.1 County Refuse Collection Fees from Business, Commercial and Non-residential Generators**

(a) Business, commercial and other nonresidential collection fees. Business, commercial, educational and other nonresidential buildings and other institutions may not receive refuse collection service provided by the County unless an application is received and approved by the County Engineer. Refuse collection fees, for a calendar month, for such classification shall be as follows:

**MONTHLY BUSINESS, COMMERCIAL AND  
OTHER NONRESIDENTIAL COLLECTION FEES**

Number of Cans Each Collection	Monthly Fee For Weekly Collection
(minimum charge)**	\$ 11.00
2	17.00
3	23.00
For each can over 3	\$6.00 per month

\*\*Each person or business

(Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.6, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 663, September 16, 1994; Ord. No. 664, September 17, 1994; Ord. No. 675, February 13, 1995; Ord. No. 706, August 6, 1996)

**Sec. 21-9.2 Fees For Disposal of Solid Waste at County Landfills, Transfer Stations, and Debris Recycling Stations.**

(a) Tipping Fees For Disposal at County Landfills, Refuse Transfer Stations, and Debris Recycling Stations. For the receipt and disposal of municipal solid waste delivered to County landfills, refuse transfer stations, and debris recycling stations by any business, industry, governmental agency, educational institution, or other nonresidential entity, a tipping fee shall be charged to the disposer as specified in Subsections (1) through (5), inclusive, following.

For purposes of this Chapter, a load shall be considered to be compacted if the vehicle or container in which it is hauled is equipped with a hydraulic mechanism, or is designed to be used in conjunction with a hydraulic ram mechanism, which compresses the load in order to maximize the amount of material that can be hauled in the vehicle or container. All other loads shall be considered to be uncompacted.

(1) Schedule of tipping fees for delivery by any business, industry, governmental agency or educational institution or any other nonresidential entity at County landfills, transfer stations and debris recycling stations equipped with a vehicle scale:

**BUSINESS, COMMERCIAL AND OTHER NONRESIDENTIAL  
DISPOSAL FEES FOR FACILITY WITH VEHICLE SCALE**

type of waste	dollars per ton	
	Effective 8/26/96	Effective 2/26/97
municipal solid waste (except special wastes)	\$43.00	\$56.00
asbestos containing materials	\$70.00	\$70.00
dead animals	\$56.00	\$56.00

Actual scale weight of the above shall be determined by subtracting the vehicle's outbound scale weight from the vehicle's inbound scale weight. All types of wastes shall be source separated or the higher applicable fee will govern. Asbestos containing Materials shall be double bagged with approved bagging material prior to entering into the landfill.

(2) Schedule of tipping fees for delivery by any business, industry, governmental agency or educational institution or any other nonresidential entity at County landfills, transfer stations and debris recycling stations equipped without vehicle scale:

**BUSINESS, COMMERCIAL AND OTHER NONRESIDENTIAL  
DISPOSAL FEES FOR FACILITY WITHOUT VEHICLE SCALE**

type of vehicle	tipping fee	
	Effective 8/26/96	Effective 2/26/97
automobile	\$ 3.00	\$ 6.00
pickup truck - 1/2 ton and under	\$ 6.00	\$10.00
full-size pickup truck - up to 3/4 ton	\$12.00	\$20.00
passenger van	\$ 6.00	\$10.00
cargo van - up to 3/4 ton	\$12.00	\$20.00
small trailer - 1/2 ton and under	\$ 6.00	\$10.00
trailer - up to 3/4 ton	\$12.00	\$20.00

Separate fees shall be assessed for a trailer and the vehicle towing it if both the trailer and the towing vehicle are carrying solid waste. Only vehicles of up to three quarter (3/4) ton capacity shall be permitted to use the transfer station facilities. 3/4 ton trucks and trailers shall be limited to two loads per day per vehicle.

(3) Schedule of tipping fees for delivery by any business, industry, governmental agency or educational institution or any other nonresidential entity at county landfills, transfer stations and debris recycling stations equipped with a vehicle scale which is not operable:

**BUSINESS, COMMERCIAL AND OTHER NONRESIDENTIAL  
DISPOSAL FEES FOR FACILITY WITH INOPERABLE VEHICLE SCALE**

<u>type of waste</u>	<u>dollars per cubic yard</u>
uncompacted municipal solid waste (except special wastes) (assumed 350 lbs/cu. yd.)	\$10.00
compacted municipal solid waste (except special wastes) (assumed 600 lbs/cu. yd.)	\$17.00
asbestos containing materials	\$21.00
dead animals	\$17.00

(4) The minimum tipping fee charge for any load shall be Ten Dollars (\$10.00).

(5) Household refuse delivered by residential self-haulers to County landfills, refuse transfer stations, and debris recycling stations shall be exempt from tipping fee charges.

(b) All tipping fee charges incurred shall be billed on a monthly basis to the business, industry, governmental agency, educational institution, or residential entity incurring such charges. Such charges shall be collected by the Department of Finance or the Department's authorized representative under such procedures as shall be prescribed by the Director of Finance. All charges collected under this Chapter shall be deposited into a special "Solid Waste Account" established by the Director of Finance, to be specifically utilized for management of solid waste, including collection, transfer, disposal, waste minimization, reuse, resource recovery, recycling, and administration.

(c) All businesses, industries, governmental agencies, educational institutions, and other nonresidential entities which intend to dispose of municipal solid waste at County landfills, refuse transfer stations, and debris recycling stations equipped with vehicle weight scales shall open a billing account with the Department of Public Works prior to disposing of any such municipal solid waste. As part of the application for such account, the applicant shall furnish the County a list of all vehicles to be used to haul municipal solid waste, together with such other information determined by the County Engineer to be necessary to ensure accurate billing and payment for municipal solid waste delivered to County landfills, refuse transfer stations, and debris recycling stations. The applicant shall immediately notify the County Engineer of any changes in the information submitted as part of the account application. The County Engineer may terminate disposal privileges at County landfills, refuse transfer stations, and debris recycling stations for any business, industry, governmental agency, educational institution, or other nonresidential entity which fails to pay tipping fee charges billed to its account within

ninety days of the due date. The County Engineer may allow resumption of service upon request for reinstatement of service by the delinquent customer and upon payment to the Director of Finance of all overdue charges.

(d) Notwithstanding any other provision to the contrary, from the effective date of this Chapter to December 31, 1995, the tipping fees in subsection 21-9.2(a)(1) through 21-9.2(a)(4) shall be waived for refuse generated by Hurricane Iniki.

(1) The Department of Public Works shall be responsible for administering the waiver provisions in this chapter.

(2) The person applying for waiver of tipping fees shall sign an affidavit prepared by the Department of Public Works, stating that the refuse was generated by Hurricane Iniki, and stating the volumetric capacity to be disposed.

(3) The Department of Public Works may grant a waiver of tipping fees provided that the applicant for the waiver adequately demonstrates to the County Engineer that the refuse was generated by Hurricane Iniki and that the volumetric capacity claimed is accurate. (Ord. No. 706, August 6, 1996)

#### **Sec. 21-9.3 Delinquent Accounts.**

Failure to pay any disposal fee shall constitute a lien on the benefitted property and shall be charged interest at the rate of one percent (1%) per month until full payment is made. In the event legal action is instituted for collection, the County shall be reimbursed for all costs of collection, including reasonable attorney's fees. (Ord. No. 91, March 2, 1955; Sec. 21, C.O. 1971; Ord. No. 166, December 21, 1972; Sec. 21-1.7, R.C.O. 1976; Ord. No. 601, December 31, 1991; Ord. No. 706, August 6, 1996)

#### **Sec. 21-9.4 Uncollectible Delinquent Accounts.**

The Director of Finance or his authorized representative may, from time to time, prepare a list of all delinquent user fees, which in the judgment of the Director of Finance or his authorized representative, finds to be uncollectible and upon recommendation of the County Attorney, shall be written off as an uncollectible bad debt and shall be deleted from the active collection account records kept by the department; and the department shall thereupon be released from any further accountability for their collection, provided that no account shall be so deleted until it shall have been delinquent for at least two (2) years and does not exceed \$1,000. Uncollectible accounts which exceed \$1,000 shall be written off only upon approval of the County Council. Any item so deleted may be reinstated as an active collectible account if the Director of Finance or his authorized representative finds that such items are, in fact, collectible or that the alleged facts as previously presented were not true. (Ord. No. 748, June 16, 2000)

## CHAPTER 22

### GENERAL PROVISIONS RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE

(The purpose of this Chapter is to cover all ordinances that deal generally with the promotion of public health, safety and welfare and excepting only those ordinances dealing with the subject of sanitation or with subjects that are more appropriately located in other titles of this Code.)

- Article 1. Curfew
  - Sec. 22-1.1 Findings And Purpose
  - Sec. 22-1.2 Definitions
  - Sec. 22-1.3 Minors On Streets At Night
  - Sec. 22-1.4 Responsibility Of Parents
  - Sec. 22-1.5 Detention Of Minor
  - Sec. 22-1.6 Penalties
- Article 2. Stray Dogs
  - Sec. 22-2.1 Purpose
  - Sec. 22-2.2 Definitions
  - Sec. 22-2.3 Strays Prohibited
  - Sec. 22-2.4 Impounding
  - Sec. 22-2.5 Applicability; Exceptions
  - Sec. 22-2.6 Animal Wardens
  - Sec. 22-2.7 Enforcement
  - Sec. 22-2.8 Summons Or Citation
  - Sec. 22-2.9 Failure To Obey Summons Or Citation
  - Sec. 22-2.10 Penalty
- Article 3. Fireworks
  - Sec. 22-3.1 Purpose
  - Sec. 22-3.2 Definitions
  - Sec. 22-3.3 Prohibitions; Permitted Uses
  - Sec. 22-3.4 License For Storage And Sale
  - Sec. 22-3.5 Permit For Public Display
  - Sec. 22-3.6 Permit For Bona Fide Religious Or Ceremonial Use Of Fireworks
  - Sec. 22-3.7 Pyrotechnic Articles; Prohibited Uses
  - Sec. 22-3.8 Prohibitions Relating To Minors Below Age Of 18 Years
  - Sec. 22-3.9 Unlawful To Set Off Pyrotechnic Articles; Exceptions
  - Sec. 22-3.10 Permitted Dates For The Sales Of Fireworks
  - Sec. 22-3.11 Enforcement And Inspection
  - Sec. 22-3.12 Administrative Revocation Of License
  - Sec. 22-3.13 Penalty
- Article 4. Pellet Guns
  - Sec. 22-4.1 Purpose
  - Sec. 22-4.2 Definitions
  - Sec. 22-4.3 Restrictions On Sale, Rental, Gift Or Other Transfer

- Sec. 22-4.4 Restrictions On Use
- Sec. 22-4.5 Permitted Uses
- Sec. 22-4.6 Penalty
- Sec. 22-4.7 Seizure, Forfeiture And Disposition Of Pellet Guns
  
- Article 5. Preservation Of Exceptional Trees
  - Sec. 22-5.1 Findings And Purpose
  - Sec. 22-5.2 Definitions
  - Sec. 22-5.3 County Arborist Advisory Committee
  - Sec. 22-5.4 Designation Of Exceptional Trees
  - Sec. 22-5.5 Consultation With County Arborist Committee
  - Sec. 22-5.6 Enforcing Authority
  - Sec. 22-5.7 Violation And Penalty
  - Sec. 22-5.8 Injunctive Enforcement
  - Sec. 22-5.9 Appeals
  
- Article 6. Removal Of Sand, Coral Or Rock From Governmental Beach, Reef Or Sandbar
  - Sec. 22-6.1 Purpose
  - Sec. 22-6.2 Authorization Required
  - Sec. 22-6.3 Destruction Of Signs
  - Sec. 22-6.4 Penalty
  
- Article 7. Grading, Grubbing And Stockpiling
  - Sec. 22-7.1 Purpose And Scope
  - Sec. 22-7.2 Title
  - Sec. 22-7.3 Application
  - Sec. 22-7.4 Definitions
  - Sec. 22-7.5 Minimum "Best Management Practices (BMPs)"
  - Sec. 22-7.6 Exemptions
  - Sec. 22-7.7 Recordation Of Decision Of The County Engineer
  - Sec. 22-7.8 Permit Required
  - Sec. 22-7.9 Application For Permit
  - Sec. 22-7.10 Compliance And Distribution
  - Sec. 22-7.11 Permit Limitations
  - Sec. 22-7.12 Permit Fees
  - Sec. 22-7.13 Expiration Of Permits
  - Sec. 22-7.14 Denial Of Permit; County Liability
  - Sec. 22-7.15 Suspension Or Revocation Of Permit
  - Sec. 22-7.16 Bond
  - Sec. 22-7.17 Specifications For Grading, Grubbing And Stockpiling
  - Sec. 22-7.18 Special Requirements
  - Sec. 22-7.19 Inspection And Commencement Of Work
  - Sec. 22-7.20 Administrative Actions And Civil Penalties
  - Sec. 22-7.21 Criminal Penalties
  - Sec. 22-7.22 Correction Of Hazardous Conditions
  - Sec. 22-7.23 Administrative Appeals
  - Sec. 22-7.24 Collection Of Fines
  - Sec. 22-7.25 Issuance Of Permit
  - Sec. 22-7.26 Liability
  - Sec. 22-7.27 Rule-making Powers



- Article 8. Prohibition Of Smoking In Certain Areas
  - Sec. 22-8.1 Definitions
  - Sec. 22-8.2 Smoking Prohibited In Certain Areas
  - Sec. 22-8.3 Exceptions
  - Sec. 22-8.4 Signs
  - Sec. 22-8.5 Violations-Penalty
  - Sec. 22-8.6 Enforcement-Administration
  - Sec. 22-8.7 Fire Code
  - Sec. 22-8.8 Severability
  - Sec. 22-8.9 Conflict With H.R.S. Chapter 328K
  - Sec. 22-8.10 Mandatory Review
- Article 9. Vacant Lots
  - Sec. 22-9.1 Findings And Purpose
  - Sec. 22-9.2 Definitions
  - Sec. 22-9.3 Premises To Be Free Of Weeds, Garbage, Trash And Waste
  - Sec. 22-9.4 Clearing Of Weeds, Garbage, Trash And Waste From Property
  - Sec. 22-9.5 Penalty
  - Sec. 22-9.6 Other Remedies
- Article 10. Dog Licenses And Regulations
  - Sec. 22-10.1 Purpose
  - Sec. 22-10.2 License Fees; Applicability
  - Sec. 22-10.3 Imposition Of License Fee; Due Date
  - Sec. 22-10.4 Kauai Humane Society; Issuance Of Licenses
  - Sec. 22-10.5 Dog Licenses And Regulations; Chapter 143, H.R.S.
- Article 11. Summer Hire Program
  - Sec. 22-11.1 Findings And Purpose
  - Sec. 22-11.2 Summer Hire Program; Management And Operation
  - Sec. 22-11.3 Supervision By Private Firms
  - Sec. 22-11.4 Referral Of Applicants
  - Sec. 22-11.5 Report And Evaluation
- Article 12. Use Of Motor Vehicles On Beaches
  - Sec. 22-12.1 Purpose
  - Sec. 22-12.2 Definitions
  - Sec. 22-12.3 Unlawful To Drive Motor Vehicles On Beaches
  - Sec. 22-12.4 Penalty
- Article 13. Gasoline Distribution Plan
  - Sec. 22-13.1 Findings And Purpose
  - Sec. 22-13.2 Mayor To Adopt Plan
  - Sec. 22-13.3 Mayor To Seek Advice
  - Sec. 22-13.4 Adoption Of Gasoline Distribution Plan
  - Sec. 22-13.5 Penalty
  - Sec. 22-13.6 Expenditure Of Funds
  - Sec. 22-13.7 Alteration Of Plan

- Article 14. Noise Control
  - Sec. 22-14.1 Prohibited Noise
  - Sec. 22-14.2 Enforcement
  - Sec. 22-14.3 Penalty
  - Sec. 22-14.4 Permits
  - Sec. 22-14.5 Exemptions
- Article 15. Obnoxious Substances
  - Sec. 22-15.1 Findings And Purpose
  - Sec. 22-15.2 Definitions
  - Sec. 22-15.3 Prohibitions
  - Sec. 22-15.4 Exceptions
  - Sec. 22-15.5 Permits To Acquire
  - Sec. 22-15.6 Ownership Or Possession Prohibited, When
  - Sec. 22-15.7 Vendor To Obtain License
  - Sec. 22-15.8 Violation-Penalty
  - Sec. 22-15.9 Severability
- Article 16. Drainage
  - Sec. 22-16.1 Purpose
  - Sec. 22-16.2 Title
  - Sec. 22-16.3 Application
  - Sec. 22-16.4 Definitions
  - Sec. 22-16.5 Adoption
  - Sec. 22-16.6 Administration
  - Sec. 22-16.7 Review, Approval and Interpretation
  - Sec. 22-16.8 Amendment of the Storm Water Runoff System Manual
  - Sec. 22-16.9 Discharge of Effluent Other Than Storm Water Runoff - Violation
  - Sec. 22-16.10 Environmental Quality Control - Violation
  - Sec. 22-16.11 Administrative Enforcement
  - Sec. 22-16.12 Judicial Enforcement of Order
  - Sec. 22-16.13 Enforcement
  - Sec. 22-16.14 Reconsideration
  - Sec. 22-16.15 Violations Provisions
  - Sec. 22-16.16 Nonliability of Department Personnel
  - Sec. 22-16.17 Decision of the County Engineer
- Article 17 Dangerous Dog
  - Sec. 22-17.1 Purpose
  - Sec. 22-17.2 Definitions
  - Sec. 22-17.3 Prohibited Acts-Conditions On Owner-Penalties
  - Sec. 22-17.4 Citation and Summons-Seizures-Relinquishment Of Ownership
  - Sec. 22-17.5 Inspection
  - Sec. 22-17.6 Exemption
  - Sec. 22-17.7 Civil Action Not Precluded
  - Sec. 22-17.8 Severability

ARTICLE 1. CURFEW

Sec. 22-1.1 Findings And Purpose.

The Council of the County of Kauai finds and declares that:

(a) The County Council has a responsibility to protect the health, safety, welfare and morals of the citizens of Kauai.

(b) In carrying out this responsibility, it is in the best interest of the juveniles on Kauai to regulate their presence in public streets and other public places during certain night time hours.

(c) Parents and guardians of minors have a legal as well as a moral obligation to supervise and care for minors in their charge.

(d) The necessity in the public interest for the provisions and prohibitions contained and enacted in this Article is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained and enacted in this Article are in pursuance of and for the purpose of securing and promoting the health, safety, welfare and morals of juveniles on Kauai and the peace and quiet of the island and its inhabitants. (Ord. No. 119, September 16, 1964; Sec. 24, C.O. 1971; Ord. No. 241, December 27, 1974; Sec. 22-1.1, R.C.O. 1976)

Sec. 22-1.2 Definitions.

When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

(1) "Loitering" means remaining idle in essentially one location and shall include the concept of spending time idly: loafing, lingering, or walking about aimlessly and shall also include the colloquial expression "hanging around."

(2) "Public Place" means any place to which the general public has access and the right to resort for business, entertainment or other lawful purposes, but does not necessarily mean a place devoted solely to the use of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or



sponsored group such as the YMCA, Boy Scouts of America, and other similar organizations, having a responsible adult leader or advisor. (Ord. No. 241, December 27, 1974; Sec. 22-1.2, R.C.O. 1976)

**Sec. 22-1.3 Minors On Streets At Night.**

(a) It shall be unlawful for any person under the age of eighteen (18) years to be walking, running, loitering, playing or motoring in or upon any public street, highway, road, alley, public place, dock, wharf, vacant premises or other unsupervised area within the County of Kauai, between the hours of 10:00 P.M. and 6:00 A.M. of the following day from Sunday to Thursday, and between the hours of midnight and 6:00 A.M. the following day on Fridays and Saturdays, unless accompanied by a parent, guardian or other adult person having the care and custody of the minor or duly appointed by the minor's parent or guardian, or where the minor is upon an emergency errand, or where the minor is traveling to and from a bona fide school or recognized club function, or engaged in lawful employment making it necessary to be in those places during curfew hours.

(b) Each violation of the provisions of this Section shall constitute a separate offense. (Sec. 24, C.O. 1971; Ord. No. 241, December 27, 1974; Sec. 22-1.3, R.C.O. 1976)

**Sec. 22-1.4 Responsibility Of Parents.**

(a) It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit a minor to walk, run, loiter, play or motor in or upon any public street, highway, road, alley, public place, dock, wharf, vacant premises or other unsupervised area within the County of Kauai during the curfew hours imposed by Section 22-1.3, except in case of necessity or when the minor is accompanied by a parent, guardian or other adult person having the care and custody of the minor or duly appointed by the minor's parents or guardian.

(b) Each violation of the provisions of this Section shall constitute a separate offense. (Ord. No. 241, December 27, 1974; Sec. 22-1.4, R.C.O. 1976)

**Sec. 22-1.5 Detention Of Minor.**

Every member of the police force while on duty is authorized to detain any minor willfully violating the provisions of Section 22-1.3 until the parent or guardian shall take the minor into custody; but the officer shall immediately upon taking custody of the minor communicate with the parent or guardian. (Ord. No. 241, December 27, 1974; Sec. 22-1.5, R.C.O. 1976)

**Sec. 22-1.6 Penalties.**

Any minor convicted of violating Section 22-1.3 shall be dealt with in accordance with Family Court law and procedure. Any parent, guardian or other adult person having the care and custody of a minor convicted of violating Section 22-1.3 and who knowingly or negligently permitted the minor to violate any provision of this Article shall be fined not more than One Hundred Dollars (\$100) for each offense of the minor. (Ord. No. 119, September 16, 1964; Sec. 24, C.O. 1971; Ord. No. 241, December 27, 1974; Sec. 22-1.6, R.C.O. 1976)

**ARTICLE 2. STRAY DOGS****Sec. 22-2.1 Purpose.**

An ordinance relating to the regulation of dogs and providing penalties for the violation thereof. (Ord. No. 255, June 16, 1975; Sec. 22-2.1, R.C.O. 1976; Sec. 22-2.1, 1978 Cumulative Supplement)

**Sec. 22-2.2 Definitions.**

When used in this Article the following words and phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

(1) "At Large" means:

(A) On the premises of a person other than the owner of the dog without consent of an occupant of such premises; or

(B) On a public street, on public or private school grounds, or in any other public place, except when under the control of the owner by leash, cord, chain or other similar means of physical restraint, provided that such leash, cord, chain or other means is not more than eight (8) feet in length.

(2) "Owner" means every person owning, harboring or keeping a dog or having custody thereof.

(3) "Stray" or "Stray Dog" means any dog at large. (Ord. No. 255, June 16, 1975; Sec. 22-2.2, R.C.O. 1976; Sec. 22-2.2, 1978 Cumulative Supplement)

**Sec. 22-2.3 Strays Prohibited.**

It shall be unlawful for the owner of any dog, whether the dog is licensed or not, to permit or cause the dog to become a stray. (Ord. No. 255, June 16, 1975; Sec. 22-2.3, R.C.O. 1976; Sec. 22-2.3, 1978 Cumulative Supplement)

**Sec. 22-2.4 Impounding.**

Any stray dog may be seized and impounded by any person authorized by law, and shall be disposed of in accordance

with the provisions of Chapter 143, H.R.S., provided that the impounding fee shall be five dollars (\$5) a day for the number of days over two days the dog is impounded. (Ord. No. 255, June 16, 1975; Ord. No. 281, May 5, 1976; Sec. 22-2.4, R.C.O. 1976; Ord. No. 332, November 3, 1977; Sec. 22-2.4, 1978 Cumulative Supplement; Ord. No. 454, January 24, 1984)

**Sec. 22-2.5 Applicability; Exceptions.**

The provisions of this Article shall not apply to:

(a) Seeing-eye dogs trained to assist blind persons when such dogs are actually being used by blind persons for the purpose of aiding them in going from place to place; or

(b) Dogs trained and used by County, State and Federal Law Enforcement Agencies in law enforcement work while such dogs are engaged in the performance of such work; or

(c) Hunting dogs when accompanied by their owner on public or private hunting or shooting ground; or

(d) Obedience trial, tracking and show dogs accompanied by their owner and being trained or in competition in public parks or school grounds, provided permission is first obtained from the proper park or school authorities for such use. (Ord. No. 255, June 16, 1975; Sec. 22-2.5, R.C.O. 1976; Ord. No. 332, November 3, 1977; Sec. 22-2.5, 1978 Cumulative Supplement)

**Sec. 22-2.6 Animal Wardens.**

a) The County of Kauai authorizes the Kauai Humane Society to appoint animal wardens pursuant to Section 143-7, H.R.S. These animal wardens shall be compensated as employees of the Kauai Humane Society or may serve without compensation on a voluntary basis.

b) In accordance with Section 143-16, H.R.S. the animal wardens shall be empowered to seize and impound any unlicensed dogs and issue any citations for such violations. (Ord. No. 332, November 3, 1977; Sec. 22-2.6, 1978 Cumulative Supplement; Ord. No. 558, November 13, 1989)

**Sec. 22-2.7 Enforcement.**

For any violation of any of the provisions of this Article or of the provisions of Chapter 143, H.R.S., it shall be the duty of any police officer, animal warden and any other officer authorized to seize and impound any dog running at large within the meaning of this Article and to issue a complaint and summons or citation to the owner or other person charged with the responsibility of complying with the provisions of this Article or with the provisions of Chapter 143, H.R.S. The summons or citation shall instruct such owner or person to appear before the District Court of the Fifth Judicial Circuit. Upon failure to appear upon the date, the appearance bond shall be forfeited. (Ord. No. 255, June 16, 1975; Sec. 22-2.6, R.C.O. 1976; Ord.

No. 332, November 3, 1977; Sec. 22-2.7, 1978 Cumulative Supplement; Ord. No. 558, November 13, 1989)

**Sec. 22-2.8 Summons Or Citation.**

There shall be provided for use by officers authorized to enforce laws relating to the regulation and control of dogs, a form of complaint and summons or citation for use in citing violators of the provisions of this Article or the provisions of Chapter 143, H.R.S. The complaint and summons or citation shall be printed in a form commensurate with the form of other summonses or citations appropriate for offenses, so designed to include all necessary information to make the same valid and legal within the laws of the State of Hawaii and the County of Kauai.

Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original. (Ord. No. 255, June 16, 1975; Sec. 22-2.7, R.C.O. 1976; Ord. No. 332, November 3, 1977; Sec. 22-2.8, 1978 Cumulative Supplement)

**Sec. 22-2.9 Failure To Obey Summons Or Citation.**

It shall be unlawful for any person to fail to appear at the place and within the time specified in the summons or citation issued to him by an officer for any violation of any section of this Article. A negotiated bail forfeiture in lieu of an appearance shall be unlawful. (Ord. No. 255, June 16, 1975; Sec. 22-2.8, R.C.O. 1976; Ord. No. 332, November 3, 1977; Sec. 22-2.9, 1978 Cumulative Supplement)

**Sec. 22-2.10 Penalty.**

Any person convicted of a violation of any section or provision of this Article shall be punished by a fine of not less than Fifty Dollars (\$50) and not to exceed One Hundred Fifty Dollars (\$150) for the first conviction. For the second conviction, the punishment shall be by a fine not less than One Hundred Dollars (\$100) and not to exceed Two Hundred Dollars (\$200). For all convictions in excess of two (2), the punishment shall be a fine of One Hundred Fifty Dollars (\$150). (Ord. No. 255, June 16, 1975; Sec. 22-2.10, R.C.O. 1976; Ord. No. 332, November 3, 1977; Sec. 22-2.10, 1978 Cumulative Supplement; Ord. No. 435, September 21, 1982)

**ARTICLE 3. FIREWORKS**

(For partial State pre-emption, see Chapter 132D, Hawaii Revised Statutes)

**Sec. 22-3.1 Purpose.**

An ordinance relating to the control, sale, giving away, possession, use, discharge and explosion of fireworks within the County and providing penalties for the violation thereof. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)



**Sec. 22-3.2 Definitions.**

When used in this Article, the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that another meaning is intended:

"Fireworks or Pyrotechnic Articles or Devices" means any combustible or explosive composition, or any substance or combination of substances, or any device prepared for the purpose of producing a visible or audible effect, or both, by combustion, explosion, deflagration or detonation.

A) Fireworks or Pyrotechnic Articles or Devices for sale to and subsequent use by the general public (household) users shall include the following:

i) Firecrackers or similar devices designed to produce audible or visual effects, or both, if the effect is produced by a charge of not more than fifty (50) milligrams (.772 grains) of pyrotechnic content.

ii) Sparklers, dipped sticks, or similar devices that have a total pyrotechnic content not exceeding one hundred (100) grams each in weight.

iii) Other pyrotechnic devices, when tested and approved by the Fire Department, whose products of combustion, fire, sparks, explosions, and any attached parts or fragments, not including smoke, does not exceed the limits of the test area.

B) Fireworks or Pyrotechnic Articles or Devices prohibited for sale to and subsequent use by the general public (household) users shall be those:

i) That exceed the limits of the test area.

ii) That contain pyrotechnic composition in excess of the defined limits.

iii) Devices that present an extreme hazard to life and property as determined by the Fire Chief.

C) Devices excluded from this Article are:

i) Trick matches, cigarette plugs, and similar devices when approved by the United States Bureau of Explosives.

ii) Toy paper caps containing twenty-five hundredths (0.25) of a grain or less of explosive substance.

iii) Auto or truck flares, railway flares, hand ship distress signals, smoke candles, smoke signals, and smoke pots.

"Test Area" means a ten (10) feet diameter circle with a height limit of eight (8) feet, where the device being tested is placed on the ground in the center of the circle and activated. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.3 Prohibitions; Permitted Uses.**

It shall be unlawful for any person to possess, store, sell, keep or offer for sale, expose for sale, use, explode or cause to explode any fireworks within the County, except as follows:

(a) Sales by wholesalers for direct shipment out of the County or to retailers licensed as provided in this Article.

(b) Storage, sale, or offer for sale or for use in the County by a person having obtained a license therefor in accordance with Section 22-3.4.

(c) Use for a public display by a non-household commercial or institutional applicant having obtained a permit therefor in accordance with Section 22-3.5.

(d) Use for a bona fide religious or ceremonial occasion by a non-household commercial or institutional applicant having obtained a permit therefor in accordance with Section 22-3.6.

(e) Use by transportation agencies for signal, warning or illumination purposes in connection with their business.

(f) Sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports.

(g) Sale of shells, cartridges, gunpowder or explosives for use in legally permitted firearms.

(h) Use by defense organizations for defense purposes.

(i) Possession, storage, sale or use of explosives and combustibles in accordance with Chapter 132 and Chapter 396, H.R.S.

(j) Use For Certain Agricultural Purposes. Applicants desiring to use fireworks for agricultural purposes, such as for use in a system to ward off predatory birds from crops, shall apply in writing for a permit therefor to the Chief of Police, setting forth the type and quantity of fireworks to be used and the nature of the use. The Chief of Police, after being satisfied that the use will be for a legitimate agricultural purpose and that it will not be hazardous to property or to any person, shall issue a permit. He shall note thereon the expiration date thereof, which shall not be more than one (1) year from the date of its issuance. The permit shall not be transferable.

(k) Use and Construction of Filipino "Bamboo Cannon":

(1) The "Bamboo Cannon" is commonly used in the Philippine culture for auditory effect by combustion and is comprised of a green bamboo and using kerosene, with two holes, one at the front and the other at the top rear. The "Bamboo Cannon" shall be used in the County for celebrations only by

non-household commercial or institutional applicants.

(2) Applicants desiring to use this device shall apply in writing for a permit to the Chief of Police. The permit shall state the name and age of the person who will fire it.

(3) No person below the age of eighteen (18) shall be issued a Use permit.

(4) The "Bamboo Cannon" shall not be fired within a radius of fifty (50) feet from a home, building, or person, except for the permittee firing the cannon; no other person shall be within a radius of fifty (50) feet of the device.

(5) The following specifications shall be adhered to:

(A) The "Bamboo Cannon" shall not be longer than eight (8) feet.

(B) The diameter shall not exceed eight (8) inches.

(C) The "Bamboo Cannon" shall be bound by wire in four (4) areas. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

#### **Sec. 22-3.4 License For Storage And Sale.**

(a) License Required. It shall be unlawful for any person to possess or store for sale, at wholesale or retail, or offer for sale or for use in the County any fireworks, unless such person shall first secure a license therefor.

(b) Application For License. The license shall be issued by the Director of Finance of the County. Application for license shall be made on a form setting forth each address where it is proposed to establish or to conduct the storage or sale of fireworks, the name of the proprietor, or if a partnership, the name of the partnership and the names of all partners, or if a corporation, the name of the corporation, the names of all officers, and a letter of approval from the Fire Department denoting the location of storage and sales area relative to fire safety. A license shall be prominently displayed for public view at each sale location.

(c) Sale to Persons Presenting Permit. Except as otherwise provided in Section 22-3.3 or for the uses set forth therein, it shall be unlawful for any person to sell or offer for sale or for use in the County any fireworks. Where a permit is required for use of fireworks, it shall be unlawful for any person to sell or transfer fireworks therefor unless the permit is presented. The permit shall be signed by the seller or transferor at the time of sale or transfer of the fireworks; and the seller or transferor shall indicate thereon the amount and type of fireworks sold or transferred to the

permittee. No person shall sell or deliver possession of fireworks to any permittee in an amount in excess of the amount specified in the permit, less the amounts shown on the permit to have previously been purchased or acquired pursuant thereto.

(d) Wholesaling Only to Dealers With License. It shall be unlawful to send or supply fireworks to a dealer who has not obtained a license as required by this Section. The term "dealer" shall include any person storing, selling or offering fireworks for sale.

(e) Fee and Term. The fee for such license shall be Five Dollars (\$5) due and payable in advance on July 1 of each year or before commencement of any activity or business for which such license is required. The license shall expire on June 30 next following issuance. There shall be no proration of fees for any licenses issued after July 1 of any year.

(f) Non-transferable. Such license shall not be transferable. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

#### **Sec. 22-3.5 Permit For Public Display.**

(a) Permit Required. All non-household commercial institutions desiring to discharge, fire or explode fireworks for a public display, including such use in parades, shall apply in writing for a permit therefor to the Chief of Police and to the Fire Chief at least five (5) working days before the proposed date of the display. The application shall state the name and address of the applicant; the name, age and address of the person who shall operate the display; the time, date and place of the display and the purpose or occasion for which the display is to be presented.

(b) Liability Coverage Required. No permit shall be issued under this Section unless the applicant shall present, at his option, either:

(1) A written certificate of an insurance carrier that it has issued to or for the benefit of the applicant a policy providing for the payment of damages in the amount of at least Fifty Thousand Dollars (\$50,000) for injury to, or death of, any one (1) person, and subject to this limitation for one (1) person, in the amount of at least One Hundred Thousand Dollars (\$100,000) for injury to, or death of, two (2) or more persons, and in the amount of at least Fifty Thousand Dollars (\$50,000) for damage to property, caused by reason of the authorized display and arising from any tortious acts of negligence of the permittee, his agents, employees or subcontractors and that the policy is in full force and effect at the date of the certificate and will so continue until at least ten (10) days after date of the public display, or

(2) The bond of a surety company duly authorized to transact business within the State, or a bond with at least two (2) individual sureties who together have assets in the State equal in value to at least twice the amount of the bond, or a deposit of cash, in the amount of at least One Hundred Thousand Dollars (\$100,000), conditioned for the payment of all damages which may be caused to any person or property by reason of the authorized display and arising out of any tortious acts of negligence of the permittee, his agents, employees or subcontractor. The security under this Section shall continue in full force and effect until at least ten (10) days after the date of the public display.

(3) The Chief of Police may require coverage in amounts larger than the minimum amounts set forth in paragraphs (1) or (2) of this Section if he deems it necessary or desirable in consideration of such factors as the location and scale of the display, the type of fireworks to be used and the number of spectators expected.

(c) Fire Chief's Review. The Fire Chief shall also review the permit application for the purpose of establishing safe separation distances from structures, other combustibles, and spectator viewing areas; to determine the boundaries of a safe fallout zone; to ensure that life safety and fire prevention concerns are addressed; and that adequate fire protection measures are available for immediate use.

(d) Issuance of Permit. The Chief of Police and the Fire Chief, after being satisfied that the display will be handled by a competent operator and that the display will not be hazardous to property and that it will not endanger any person or persons, shall issue a permit for the public display. The permit shall authorize the holder to display fireworks only at the place and only during the time set forth therein, and to purchase or acquire and possess the specified fireworks between the date of the issuance of the permit and the time during which the display of the fireworks is authorized.

(e) "Competent Operator" shall mean a person or persons with current certification and license to operate fireworks displays as recognized by the Chief of Police and the Fire Chief. This provision is applicable to those events where aerial-type displays are presented and where the pyrotechnic devices used exceed the limit for fireworks approved for use in the County. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.6 Permit For Bona Fide Religious Or Ceremonial Use Of Fireworks.**

(a) Individual Use Prohibited. Use of fireworks for religious or ceremonial use by individuals for his personal use is prohibited.

(b) Permits For Certain Establishments. The proprietor or officers of any temple, cemetery, restaurant or other non-household commercial firm or institution desiring to discharge, fire or explode fireworks for bona fide religious or ceremonial occasions at the site of such establishment, or desiring to provide for the discharging, firing or exploding of fireworks by members of their congregation, clients, patrons or customers for bona fide religious or ceremonial occasions at the site of such establishment, shall apply in writing for a permit therefor to the Chief of Police. The application shall state the name and address of the applicant, establishment, the name or names of the proprietor or officers thereof, the name, age and address of the person who shall actually supervise the use of the fireworks, the types and quantity of fireworks to be used, and the type or types of occasions for which the fireworks are to be used. Application may be made for a supply of fireworks sufficient for a six (6) month period, and for use on more than one (1) occasion, either actual or reasonably anticipated, during that period.

(c) "Ceremonial Occasion." The term "ceremonial occasion" shall include, but not be limited to, birthdays, anniversaries, weddings and housewarming celebrations. The term shall not include celebrations of a New Year or the Fourth of July.

(d) Issuance of Permit. The Chief of Police, after being satisfied that the fireworks will be used for bona fide religious or ceremonial occasions and that the use will not be hazardous to property and will not endanger any person or persons, shall issue a permit for that use. The Chief of Police shall note on the permit the expiration date thereof, which shall not be more than six (6) months from the date of its issuance. No fee shall be charged for the permit. The permit shall not be transferable.

(e) Violation. If fireworks are used contrary to, or not in conformity with, the terms of any permit issued under this Section the permittee, including the persons named as proprietor or officers of any applicant establishment, and the person designated in the application to supervise the use of the fireworks shall be subject to the penalty set forth in this Article. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.7 Pyrotechnic Articles; Prohibited Uses.**

(a) Unlawful to Set Off Pyrotechnic Articles From or Into Motor Vehicles. It shall be unlawful for any person to

throw, set off, fire or cause to be exploded any pyrotechnic articles from or into any motor vehicle.

(b) Unlawful to Set Off Pyrotechnic Articles in Vicinity of Hospitals. It shall be unlawful for any person to throw, set off, fire or cause to be exploded any pyrotechnic articles, in any place within one thousand (1,000) feet of any building occupied by patients at any hospital, convalescent home, home for the aged or animal hospital.

(c) Unlawful to Set Off Pyrotechnic Articles on Public Ways, in Parks, Public Beaches, Schools, or Places of Worship During Services; Exception. It shall be unlawful for any person to throw, set off, fire or cause to be exploded any pyrotechnic articles on or in any highway, alley, street or other public way, sidewalk, park, public beach, school, school yard, or within one thousand (1,000) feet of any building used for public worship while services are being held therein unless permission be obtained in accordance with Section 22-3.5 or 22-3.6.

(d) Unlawful to Remove Pyrotechnic Contents From Commercially Manufactured Pyrotechnic Articles and to Make Homemade Pyrotechnic Articles. It shall be unlawful for any person to remove or extract the pyrotechnic contents from any commercially manufactured pyrotechnic articles. It shall be unlawful for any adult to permit any minor to remove or extract the pyrotechnic contents from any commercially manufactured pyrotechnic article and to use the same in making homemade pyrotechnic articles. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.8 Prohibitions Relating To Minors Below Age Of 18 Years.**

(a) It shall be unlawful for any person to offer for sale, sell or give any pyrotechnic articles to minors below the age of eighteen (18) years, and for any minor below this age to possess, purchase or fire any pyrotechnic articles.

(b) The parents, guardians and other persons having the custody and control of any minor under the age of eighteen (18) years, who knowingly permits a minor to possess, purchase or fire any pyrotechnic articles shall be deemed to be in violation of this Section and shall be subject to the penalty as provided in this Article. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.9 Unlawful To Set Off Pyrotechnic Articles; Exceptions.**

Except as permitted under Section 22-3.3, it shall be unlawful for any person to throw, set off, fire or cause to

be exploded any pyrotechnic articles except on the following days:

- (1) Fourth of July, 6:00 p.m. to 12:00 midnight.
- (2) New Year's Eve, 6:00 p.m., December 31, to 1:00 a.m. January 1, New Year's Day.
- (3) Chinese New Year's Eve, 6:00 p.m. to 1:00 a.m., Chinese New Year's Day. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.10 Permitted Dates For the Sales Of Fireworks.**

(a) New Year's Holiday: Sales may commence not earlier than 12:01 A.M., December 25 and shall cease at 9:00 P.M. on New Year's Eve, December 31.

(b) Independence Day Holiday: Sales may commence not earlier than 12:01 A.M., June 28 and shall cease at 9:00 P.M., July 4.

(c) Chinese New Year's: Sales may commence not earlier than 12:01 A.M., seven (7) days prior to the holiday and sales shall cease at 9:00 P.M. on the eve before the holiday. (Ord. No. 96, June 13, 1957; Sec. 23, C.O. 1971; Ord. No. 153, December 27, 1971; Sec. 22-3.1, R.C.O. 1976; Ord. 301, April 21, 1977; Sec. 22-3.1, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)

**Sec. 22-3.11 Enforcement and Inspection.**

(a) All police officers and duly authorized fire prevention inspectors shall enforce this article and rules adopted pursuant to this article.

(b) All duly authorized enforcement personnel may enter and inspect any site to ascertain compliance or noncompliance with this article, any rule adopted pursuant to this article, or any permit issued pursuant to this article. (Ord. No. 640, November 2, 1993)

**Sec. 22-3.12 Administrative Revocation of License.**

(a) If any duly authorized enforcement personnel determines that there is reasonable suspicion to believe that a seller is not licensed pursuant to this article or is selling fireworks not authorized by this article, such enforcement personnel shall immediately take possession of the license or fireworks, or both, and issue a citation.

(b) The enforcement personnel shall provide all persons cited under this article an administrative hearing date so that their case may be heard.

(c) All persons cited under this article shall cease selling all pyrotechnic articles until their case can be heard through an administrative hearing.

(d) All persons cited under this article with an approved and current business license shall have their license



temporarily suspended until their case can be heard through an administrative hearing.

(e) Administrative license revocation is in addition to any other remedy or penalty provided in this article, provided that no license revocation shall exceed five (5) years.

(f) The Fire Chief shall adopt rules necessary for the purposes of this section. (Ord. No. 640, November 2, 1993)

**Sec. 22-3.13 Penalty.**

Any person violating any provision of this article shall be guilty of a violation; except for persons convicted for illegally selling fireworks pursuant to Secs. 22-3.4, 22-3.8, or 22-3.10, shall be guilty of a petty misdemeanor and fined a minimum of \$250. Additionally, the court shall revoke any existing license from persons convicted of illegally selling fireworks. No license shall be issued to any person whose license has been so revoked or any person who has been convicted of illegally selling fireworks until the expiration of five (5) years after such revocation or conviction. (Ord. No. 153, December 27, 1971; Sec. 22-3.11, R.C.O. 1976; Ord. No. 301, April 21, 1977; Sec. 22-3.11, 1978 Cumulative Supplement; Ord. No. 640, November 2, 1993)



#### ARTICLE 4. PELLET GUNS

##### Sec. 22-4.1 Purpose.

An ordinance to regulate the sale, rental, transfer, possession and use of pellet guns and to provide penalties for violation thereof. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.1, R.C.O. 1976)

##### Sec. 22-4.2 Definitions.

When used in this Article the following words or phrases shall have the meaning given in this Section unless it appears from the context that a different meaning is intended:

(1) "Dealer" means any person engaged in the business of selling or renting pellet guns.

(2) "Pellet Gun" means any gun, rifle or pistol by whatever name known, which is designed to discharge a pellet or B.B. shot by the action of compressed air or gas, or by the action of a spring or elastic device, but does not include any firearm. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.2, R.C.O. 1976)

##### Sec. 22-4.3 Restrictions On Sale, Rental, Gift Or Other Transfer.

(a) It shall be unlawful for any dealer to sell, lend, rent, give or otherwise transfer a pellet gun to any person under the age of eighteen (18) years where the dealer knows or has reasonable cause to believe the person to be under eighteen (18) years of age or where the dealer has failed to make reasonable inquiry relative to the age of that person and the person is under eighteen (18) years of age.

(b) It shall be unlawful for any person to sell, lend, rent, give or otherwise transfer any pellet gun to any person under eighteen (18) years of age, except where the relationship of parent and child, guardian and ward, or adult instructor and pupil exists between the person and the person under eighteen (18) years of age. (Ord. No. 121,



October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.3, R.C.O. 1976)

**Sec. 22-4.4 Restrictions On Use.**

(a) It shall be unlawful for any person under eighteen (18) years of age to carry any pellet gun on the streets, alleys, public roads, or public lands unless accompanied by an adult, provided that the person under eighteen (18) years of age not so accompanied may carry a pellet gun unloaded or in a suitable case securely wrapped.

(b) It shall be unlawful for any person to discharge any pellet gun from or across any street, sidewalk, alley, or public land, or any public place, except on a properly constructed target range.

(c) It shall be unlawful for any person to discharge any pellet gun on any private parcel of land or residence in such a manner that the pellet or B.B. shot may reasonably be expected to traverse any ground or space outside the limits of a parcel of land or residence or in a manner that persons or property may be endangered, provided, that nothing in this Article is to prevent any person who has obtained a hunting license pursuant to Chapter 187, H.R.S., from engaging in hunting in accordance with law.

(d) It shall be unlawful for any person to discharge any pellet gun in a manner or under circumstances that persons or property may be endangered. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.4, R.C.O. 1976)

**Sec. 22-4.5 Permitted Uses.**

Notwithstanding any provision of this Article to the contrary, it shall be lawful for any person under eighteen (18) years of age to have in his possession any pellet gun if it is:

(a) Kept in his domicile.

(b) Used by a person under eighteen (18) years of age, who is a duly enrolled member of any club, school or society organized for educational or training purposes and maintaining as part of its facilities or having written permission to use an indoor or outdoor target range, when the pellet gun is used at a target range under the supervision, guidance and instruction of a responsible adult.

(c) Used in any private parcel of land, or residence under circumstances in which the pellet gun can be fired, discharged, or operated in a manner so as not to endanger persons or property and in a manner so as to prevent the pellet or B.B. shot from traversing any grounds or space outside the limits of a parcel of land or residence.

(d) Used in hunting or going to or from the place of hunting in accordance with law by the person under

eighteen (18) years of age, who has obtained a hunting license pursuant to Chapter 187, H.R.S., or who has obtained a hunting license. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.5, R.C.O. 1976)

**Sec. 22-4.6 Penalty.**

Any person convicted of violating any provisions of this Article shall be fined not exceeding Five Hundred Dollars (\$500) for each offense. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.6, R.C.O. 1976)

**Sec. 22-4.7 Seizure, Forfeiture And Disposition Of Pellet Guns.**

Any police officer who arrests any person for the violation of any provision of this Article shall seize the pellet gun. Upon conviction of the person, the pellet gun so seized shall be forfeited to the County of Kauai and the Chief of Police shall sell the pellet gun at a public auction once annually, at a time and place as he may designate. Notice of public auction shall be published in a newspaper of general circulation once, not less than twenty (20) days before the auction. The proceeds from all sales shall be used to defray the expenses of the auction and the balance shall become a general realization of the County of Kauai. (Ord. No. 121, October 7, 1964; Sec. 22, C.O. 1971; Sec. 22-4.7, R.C.O. 1976)

**ARTICLE 5. PRESERVATION OF EXCEPTIONAL TREES**

**Sec. 22-5.1 Findings And Purpose.**

The County Council finds that the General Plan for the island of Kauai has for its objective the improved quality of life for present and future generations of mankind. The plan recognizes the intrinsic beauty of the landscape and the need to protect scenic and historic resources so that the island will maintain its rural character and continue to attract vacationers and travelers. In order to better control problems of flooding and soil conservation and to maintain the concept of Kauai as the "Garden Isle" by ensuring that all physical growth is carried out so as to maintain the natural ecology, we believe this Ordinance establishing protective regulations for certain exceptional and historical trees is a necessary and constructive approach toward achieving the General Plan's purpose and can be lived with more easily than a "blanket" tree ordinance.

Changes in land use are inevitable, and changes will be made; however, the Council feels strongly that change must go hand in hand with concern for the environment, heritage, culture, aesthetics, and other similar concepts. In the belief that wisdom and careful planning will serve both ends, and having determined that these regulations will

promote the health, safety and general welfare of the community and are in the best interest of the citizens of Kauai, the Council enacts this Ordinance as a means of preserving the environmental character of Kauai. (Ord. No. 240, December 27, 1974; Sec. 22-5.1, R.C.O. 1976)

#### **Sec. 22-5.2 Definitions.**

When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

- (1) "Exceptional Trees" means a tree or group of trees with historical or cultural value, or which by reason of its age, rarity, location, size, aesthetic quality or endemic status has been designated by the County Council to be preserved and so earmarked on maps of Kauai to be kept on file in the County Planning Department and the Department of Public Works, Building Division. (Ord. No. 240, December 27, 1974; Sec. 22-5.2, R.C.O. 1976)

#### **Sec. 22-5.3 County Arborist Advisory Committee.**

(a) A County Arborist Advisory Committee is created to advise the Council in determining which trees are to be designated "exceptional trees" by reason of historical or cultural value, aesthetic quality, endemic status, age, rarity, location, or size and are to be reserved for posterity.

(b) The County Arborist Advisory Committee shall be composed of five (5) members as follows: One (1) member shall be the head of the Kauai Division of Forestry, State Land and Natural Resources, or his authorized delegate; one (1) member shall be an official of the National Tropical Botanical Garden, Lawai, Kauai; one (1) member shall be the Planning Director of the County of Kauai or his authorized delegate; two (2) members shall be members of the public who have been interested or engaged in horticultural beautification and recommended by one (1) or more of the following organizations: Mayor's Beautification Task Force, Mokuhan Club, Governor's Environmental Council, the National Tropical Botanical Garden, and the State Forestry Department of Kauai. Each member from the public shall be appointed to the committee by the Mayor from the list of nominees submitted by the foregoing organizations, for a term coterminous with the term of the appointing authority. Any vacancy will be filled by the Mayor from the same list of nominees. No member of the Committee shall use his or her position for personal gain or benefit.

(c) The County Arborist Advisory Committee shall compile a list and location of those trees which it deems exceptional for review by the Council and strive to obtain written accord from the owner of the property. Upon

approval by the County Council, the committee shall prepare official maps designating thereon those trees which have been determined to be exceptional and shall file the maps with the County Planning Department and the Department of Public Works, Building Division.

(d) Upon designation by the County Council as an exceptional tree, the County Clerk, by registered letter, shall notify all property owners and occupants that a designation has been made.

(e) If any disagreement with the designation shall arise, the property owner may appeal the designation to the County Council within thirty (30) days of the receipt of notification. The County Council shall hear and determine the matter and may affirm, modify, or disaffirm the designation as an exceptional tree within sixty (60) days of the filing of the notice of appeal.

(f) Any citizen or citizen group may petition the Committee to examine a particular tree or group of trees for the purpose of having it recommended as an exceptional tree.

(g) From time to time the County Arborist Advisory Committee may recommend to the County Council the addition or removal of exceptional trees from the maps.

(h) In the event it should be found that the designation as an exceptional tree is a total denial of the reasonable economic use of the property, the County Council may remove the tree from the protection of the Ordinance.

(i) The initial list of exceptional trees shall be officially adopted by ordinance. Any additions or deletions to the list shall also be by ordinance. (Ord. No. 240, December 27, 1974; Sec. 22-5.3, R.C.O. 1976)

#### **Sec. 22-5.4 Designation Of Exceptional Trees.**

The following trees are designated as "exceptional trees" for the County of Kauai. They are:

**No. K-1 - Tropical Almond**

(otherwise known as: False Kamani, Kamani Ula or Terminalia Catappa)

**- Location**

Along Ahukini Road (North side) about 75 yards East of Kuhio Highway, near the Southeast corner of Ala Moana Bowling Alley -  
TMK: 3-6-06 and 3-7-01-1.

**No. K-2 - Swamp Mahogany**

(otherwise known as: Robusta Eucalyptus or Eucalyptus Robusta)

**- Location**

Along both sides of Maluhia Road extending 3/4 of a mile southward from Knudsen Gap.  
TMK: 2-7-02-1 and 2-8-01-5.

**No. K-3 - Ginkgo**

(otherwise known as: Maidenhair tree, Sacred Tree of China or Ginkgo Diloba)



- Location  
Kokee State Park on Kaunuoha Ridge near the Kokee Road. TMK: 1-4-01-13 and Por. Tax Key 1-4-01.
- No. K-4 - Chinese Banyan  
(otherwise known as: India-laurel fig or Ficus microcarpa (was known as F. retusa))
- Location  
At Nawiliwili north of Highway 501 on the hillside south of Kauai High School, at Menehune Gardens. TMK: 3-2-05-8 and 3-2-05-17.
- No. K-5 - Baobab  
(otherwise known as: Bottle tree, Monkey-bread tree)
- Location  
Behind the Koloa Missionary Church yard near the southeast corner, TMK: 2-8-10-1.
- No. K-6 - Norfolk Island Pine or Cook Pine  
(otherwise known as Araucaria heterophylla or columnaris)
- Location  
Begins at the end of the Kipu County Road and extends 3/4 of a mile along the Kipu Ranch driveway. TMK: 3-1-03-1.
- No. K-7 - King Kalakaua's Durian  
(otherwise known as Durian or Durio zibethinus)
- Location  
On the Grove Farm Homestead grounds among other interesting trees planted by G.N. Wilcox near Highway 501 at Ukukukui. TMK: 3-6-01-2.
- No. K-8 - Earpod  
(otherwise known as Elephant's ear or Enterlobium cyclocarpum)
- Location  
In Koloa along Poipu Road in front of the Kauai Mortuary, Inc. TMK: 2-8-10-15.
- No. K-9 - Monkeypod  
(otherwise known as Raintree, Ohai or Pithecellobium saman)
- Location  
In Waimea in front of the historical Gulick-Towell home. TMK: 1-2-06-34.
- No. K-10 - Siris tree  
(otherwise known as Woman's tongue, white monkey pod, lebbek or Albizia lebbek)
- Location  
In Waimea Valley on the Gay's Estate grounds at the end of Gay Road (also known as Oli Oli Road). TMK: 1-6-01-29.

- No. K-11- Kamani  
 (otherwise known as Alexandrian Laurel, Kamanu or Calophyllum inophyllum)  
 - Location  
 In Hanalei near the Waioli Mission House. There are two Kamani trees behind the white picket fence and in front of the Mission House. K-11 is the tree located northeast of the house. TMK: 5-5-06-8.
- No. K-12- Coconut Grove  
 (otherwise known as Niu, Coconut-palm or Cocos nucifera)  
 - Location  
 The grove extends both makai and mauka of Highway 56 (Kuhio Highway) at Waipouli. TMK: 4-3-6-2, 4-3-7-27, 28, and 29.
- No. K-13- Tropical Almond  
 (otherwise known as: False Kamani, Kamani Ula or Terminalia Catappa)  
 - Location  
 Along Kuhio Highway in Haena on TMK: 5-09-05:2 (1990) approximately 80 feet mauka of the highway.
- No. K-14- Indian Banyan  
 (otherwise known as: Ficus Benghalensis)  
 - Location  
 Approximately 84 feet east of Hulemanu Road in Niumalu, on the western boundary of TMK: 3-2-02:26. A portion of the tree is located within TMK: 3-2-02:26, and the remainder of the tree is located within TMK: 3-2-02:02.
- No. K-15- Kauila  
 (otherwise known as: Alphitonia ponderosa)  
 - Location  
 Waimea Canyon State Park, at eastern end of Kauhao Ridge, just north-west of Kokee Ditch gaging station, 3,300 feet elevation TMK: 1-4-01:3.
- No. K-16- Paired Moreton Bay Fig Trees  
 (otherwise known as Ficus macrophylla)  
 - Location  
 The two trees flank the two entrances into Kilauea School, TMK: 5-2-09:6 (1991).
- No. K-17- Breadfruit Tree  
 (otherwise known as Artocarpus incisus)  
 - Location  
 On the grounds of Kilauea School, TMK: 5-2-09:6 (1991).
- No. K-18- Royal Poinciana  
 (Otherwise known as Debonix regina)

- Location  
In Kilauea on the grounds of the Mary N. Lucas Trust Estate, TMK: 5-2-21:22 (1991)
- No. K-19- Teak  
(Otherwise known as Tectona grandis)
- Location  
In Lihue at 3621 Nokekula Circle, off Nawiliwili Road. TMK: none
- No. K-20- Monkey-Pod  
(otherwise known as Pithecellobium saman)
- Location  
In Koloa behind old Yamamoto Store next to river. TMK: 2-8-07-16. (Ord. No. 277, April 7, 1976; Appendix "B", 1978 Cumulative Supplement; Ord. No. 578, October 9, 1990; Ord. No. 581, November 30, 1990; Ord. No. 585, March 25, 1991; Ord. No. 590, August 12, 1991; Ord. No. 602, April 4, 1992; Ord. No. 797, November 26, 2002)

**Sec. 22-5.5 Consultation With County Arborist Advisory Committee.**

Prior to the issuance of any building, zoning, or subdivision permit, the County Planning Department and the Department of Public Works, Building Division, may request advice from the County Arborist Committee concerning trees within any proposed development to assure that exceptional trees are retained and to prevent the unnecessary destruction of those trees during development or redevelopment of any tract or lot within the County of Kauai. The lack of designation as "exceptional tree" does not diminish the responsibility and the authority of the County Planning Department and the Department of Public Works, Building Division, to recommend trees to be incorporated into a development plan. (Ord. No. 240, December 27, 1974; Sec. 22-5.4, R.C.O. 1976)

**Sec. 22-5.6 Enforcing Authority.**

The County Planning Department and the Department of Public Works, Building Division, in their respective spheres of authority, shall be charged with police power to do all acts necessary to ensure that the provisions of this Article are not violated including, but not limited to, the issuance of citations for the violation of any provisions of this Article. The provisions of this Article shall not be superseded by any permit issued by any County agency under any other ordinance. (Ord. No. 240, December 27, 1974; Sec. 22-5.5, R.C.O. 1976)



**Sec. 22-5.7 Violation And Penalty.**

(a) It shall be unlawful for any person to damage, remove, or otherwise destroy any tree in the County of Kauai which has been designated "exceptional" without approval from the County Council. Any person convicted of violating any provision of this Article shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned not more than ninety (90) days or both for each offense.

(b) The terms "damage" and "or otherwise destroy" shall not include normal maintenance of the tree by the owner thereof, including trimming, pruning or shaping of the branches or roots.

(c) Trees in a grove may be removed, subject to approval of the County Planning Department. (Ord. No. 240, December 27, 1974; Ord. No. 282, May 6, 1976; Sec. 22-5.6, R.C.O. 1976)

**Sec. 22-5.8 Injunctive Enforcement.**

Any threatened violation of the provisions of this Article is declared to be a public nuisance and may be abated through proceedings for injunctive relief or similar relief in Circuit Court or other court of competent jurisdiction. (Ord. No. 240, December 27, 1974; Sec. 22-5.7, R.C.O. 1976)

**Sec. 22-5.9 Appeals.**

Any person aggrieved by any action of the County Council may within thirty (30) days of action file an appeal to the Circuit Court. (Ord. No. 240, December 27, 1974; Sec. 22-5.8, R.C.O. 1976)

**ARTICLE 6. REMOVAL OF SAND, CORAL OR ROCK FROM  
GOVERNMENT BEACH, REEF OR SANDBAR**

**Sec. 22-6.1 Purpose.**

An ordinance regulating the taking of sand, coral, or rock from any government beach, reef or sandbar, or the destroying, damaging, defacing or removing of any sign or notice of prohibition, within the County and providing a penalty for the violation thereof. (Ord. No. 77, November 7, 1951; Sec. 27, C.O. 1971; Sec. 22-6.1, R.C.O. 1976)

**Sec. 22-6.2 Authorization Required.**

The taking of sand, coral or rock from any government beach, reef or sandbar within the County, for the purpose of sale or exportation, without the permission of the governmental authority vested by law with the control thereof, is prohibited. (Ord. No. 77, November 7, 1951; Sec. 27, C.O. 1971; Sec. 22-6.2, R.C.O. 1976)

**Sec. 22-6.3 Destruction Of Signs.**

The removal, destruction, damaging or defacing of any sign placed on any government beach, reef or sandbar, giving notice that the taking of sand, coral, or rock therefrom for the purpose of sale or exportation, without the permission of the governmental authority vested by law with the control thereof, is prohibited. (Ord. No. 77, November 7, 1951; Sec. 27, C.O. 1971; Sec. 22-6.3, R.C.O. 1976)

**Sec. 22-6.4 Penalty.**

Any person convicted of violating any provisions of this Article shall be guilty of a misdemeanor and be fined not more than One Thousand Dollars (\$1,000) or imprisoned not more than one (1) year, or both for each offense. (Ord. No. 77, November 7, 1951; Sec. 27, C.O. 1971; Sec. 22-6.4, R.C.O. 1976)

**ARTICLE 7. GRADING, GRUBBING AND STOCKPILING**

**Sec. 22-7.1 Purpose And Scope.**

The purposes of this Article are to provide standards to safeguard the public health, safety and welfare; to protect property; to control soil erosion and sedimentation by setting standards for grading, grubbing and stockpiling; and to protect historic properties and burial sites in the County of Kauai; setting forth the requirements governing grading, grubbing and stockpiling and establishing the administrative procedures, minimum requirements for issuance of permits and the enforcement of such requirements. (Ord. No. 262, July 23, 1975; Sec. 22-7.1, R.C.O. 1976; Sec. 22-7.1, 1978 Cumulative Supplement; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.2 Title.**

This Ordinance shall be known as the "Sediment and Erosion Control Ordinance." (Ord. No. 262, July 23, 1975; Sec. 22-7.2, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.3 Application.**

The provisions of this Article shall apply to all grading, grubbing and stockpiling in the County of Kauai and shall supersede all provisions of existing ordinances covering the same subject matter. (Ord. No. 262, July 23, 1975; Sec. 22-7.3, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.4 Definitions.**

When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Best Management Practices" or "BMPs" means activities, practices, facilities, and/or procedures that will to the maximum extent practicable prevent the discharge of pollutants, including sediment and other contaminants, from a construction site. BMPs may include a schedule of activities, the prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from raw material storage.

"Burial site" shall have the same meaning as that term is defined in Hawaii Revised Statutes Section 6E-2, as amended from time to time.

"Coastal Dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"County Engineer" means the County Engineer, Department of Public Works, County of Kauai or a duly authorized representative.

"Earth Material" means any rock, gravel, sand, natural soil or combination thereof.

"Engineer" means a person duly licensed as a professional Engineer (Civil Branch) in the State of Hawaii.

"Engineer's Soil Report" means a report on soils conditions prepared by an Engineer or Geologist experienced in the practice of soils mechanics and foundations engineering.

"Excavation" or "Cut" means any act by which earth material is cut into, dug or removed, and shall include the conditions resulting therefrom.

"Fill" means any act by which earth materials are placed or deposited by artificial means, and shall include the resulting deposit of earth material.

"Frontal dune" means the first dune encountered mauka of the beach.

"Geologist" means a person who holds a 4-year degree in Geology from an accredited college or university.

"Grading" means any excavation or fill or any combination thereof.

"Grubbing" means any act by which vegetation or materials, including but not limited to trees, timber, shrubbery, plants, concrete or asphalt concrete, is dislodged or uprooted from the surface exposing bare ground.

"Historic property" shall have the same meaning as that term is defined in Kauai County Code 1987, Section 8-1.5, as amended from time to time, and as that term is defined in Hawaii Revised Statutes Section 6E-2, as amended from time to time.

"Maximum extent practicable" means reasonably economically achievable measures for the control of the addition of pollutants from nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction

achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

"Permittee" means the person or party to whom the permit is issued and shall be the owner or developer of the property whether a person, firm, corporation, partnership or other legal entity having legal or equitable title to the property and being responsible for the work.

"Person" shall mean an individual, firm, corporation, partnership or other responsible legal entity.

"Planning Director" means the Planning Director of the County of Kauai or a duly authorized representative.

"Sand" means naturally produced particles of predominately (greater than 90%) calcium carbonate mineralogy consisting of skeletal fragments of reef-dwelling organisms, excluding the product of artificial crushing or disaggregation of limestone rock, with a cumulative grain size distribution 20% finer or coarser than the existing beach sediment, but in no event shall the grains be smaller than 0.062 mm or larger than 4 mm. The particles shall be substantially clean of soil, rubble, and debris, and shall contain no more than six (6) percent volume of silt and clay size material, except that where native beach environments display a higher than normal percentage of silt and clay size material, the percent volume shall not exceed nine (9) percent. Particles are expected to be free of any coating or other content that may discolor the water.

"Shoreline area" shall have the same meaning as that term is defined in Hawaii Revised Statutes Chapter 205A.

"Soil" shall have the same meaning as that term is defined in the soil survey of the islands of Kauai, Oahu, Maui, Molokai and Lanai, State of Hawaii, printed by the United States Department of Agriculture, Soil Conservation Service, in cooperation with the University of Hawaii Agricultural Experiment Station issued August, 1972.

"Stockpiling" means the temporary open storage of soil, sand, gravel, rock or other similar material in excess of five hundred (500) cubic yards upon any premises.

"Surveyor" means a person duly licensed as a professional land surveyor in the State of Hawaii. (Ord. No. 262, July 23, 1975; Sec. 22-7.4, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.5 Minimum "Best Management Practices (BMPs)."**

Regardless of whether a permit is required pursuant to this Article, or an exemption from Sec. 22-7.6 is applicable, all grading, grubbing and stockpiling activities shall incorporate BMPs to the maximum extent practicable to prevent damage by sedimentation to streams, watercourses, natural areas and the property of others. It shall be the permittee's and the property owner's responsibility to ensure that the BMPs are satisfactorily implemented. As determined by specific site requirements, the County Engineer may require the following minimum BMPs:



(a) Drainage. On-site drainage shall be handled in such a way as to control erosion, prevent damage to downstream properties and to return waters to the natural drainage course in a manner that minimizes sedimentation or other pollution to the maximum extent practicable.

(b) Dust control. All areas disturbed by construction activities shall control dust emissions to the maximum extent practicable through the application of BMPs, that may include watering with trucks or sprinklers, erection of dust fences, limiting the area of disturbance, and timely grassing of finished areas.

(c) Vegetation. Whenever feasible, natural vegetation, especially grass, should be retained. If it is necessary to be removed, trees, timber, plants, shrubbery and other woody vegetation, after being uprooted, displaced or dislodged from the ground by excavation, clearing or grubbing, shall not be stored in or deposited along the banks of any stream, river or natural watercourse. The County Engineer may require the removal and disposal of such vegetation from the site within a reasonable time, but not to exceed three months from when it was uprooted, displaced, or dislodged.

(d) Erosion controls. All disturbed areas shall be stabilized with erosion control measures that may include: staging construction; clearing only areas essential for construction; locating potential nonpoint pollutant sources away from steep slopes, water bodies, and critical areas; routing construction traffic to avoid existing or newly planted vegetation; protecting natural vegetation with fencing, tree armoring, and retaining walls or tree wells; stockpiling topsoil, covering the stockpile to prevent dust, and reapplying the topsoil; covering or stabilizing all soil stockpiles; using wind erosion control; intercepting runoff above disturbed slopes and conveying it to a permanent channel or storm drain; constructing benches, terraces, or ditches at regular intervals to intercept runoff on long or steep disturbed or man-made slopes; providing linings or other method to prevent erosion of storm water conveyance channels; using check dams where needed to slow flow velocities; using seeding and fertilizing, mulching, sodding, matting, blankets, bonded fiber matrices, or other effective soil erosion control technique; and providing vehicle wheel wash facilities for vehicles before they leave the site.

(e) Sediment control. In addition to the erosion control measures of this section, measures shall be taken to capture sediment that is transported in runoff to prevent the sediment from leaving the site. Sediment control measures include sediment basins; sediment traps; filter fabric silt fences; straw bale, sand bag, or gravel bag barriers; inlet protection; stabilized construction entrances, and other measures to minimize off site tracking of sediment by construction vehicles; and vegetated filter strips.

(f) Material and waste management. Measures to insure the proper storage of toxic material and prevent the discharge

of pollutants associated with construction materials and waste shall implemented.

(g) Timing of control measure implementation. Timing of control measure implementation shall be in accordance with the approved erosion control plan if such plan is required. At a minimum, disturbed areas of construction sites that will not be redisturbed for twenty-one days or more shall be stabilized (grassed or graveled) by no later than the fourteenth day after the last disturbance.

(h) The use of soil as fill is prohibited within any shoreline area, as defined by section 205A-41, Hawaii Revised Statutes, except for sand as defined in section 22-7.4 of this Article.

(i) Any grading or mining of a coastal dune is prohibited, unless permitted by the Board of Land and Natural Resources.

(j) For projects having a disturbed ground area of more than one (1) acre, a plan showing the BMPs to be incorporated shall be held on site.

(k) A BMP manual including, but not limited to, the preceding minimum BMPs shall be adopted by the County Engineer within one hundred eighty (180) days from the enactment of this ordinance, pursuant to Chapter 91, Hawai'i Revised Statutes. (Ord. 262, July 23, 1975; Sec. 22-7.5, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### Sec. 22-7.6 Exemptions.

The Permit requirements of Section 22-7.8 of this Article shall not apply to the following:

(a) Work in a public street, sidewalk, alley, right-of-way or in an isolated, self-contained Government controlled area.

(b) Mining, quarrying, landfill or sanitary landfill operations subject to and operated in accordance with applicable County, State or Federal government regulations or laws, unless required by such other government regulations or laws or any permits issued thereunder.

(c) Excavation and backfill for the construction of basements and footings of a building, retaining wall, or other structure authorized by a valid building permit within the footprint of the building. This shall not exempt any fill made outside the building lines or the placing of fill material obtained from excavations on other premises.

(d) Grading and grubbing individual cemetery plots.

(e) Agricultural operations, including ranching incidental to or in conjunction with crop or livestock production, managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district directors, and in accordance with an actively pursued comprehensive conservation plan that has been exempted by the County Engineer.

(1) This exemption shall not be granted by the County Engineer unless:

(A) the applicant submits a copy of the conservation plan to the County Engineer, accompanied by written verification that the Soil and Water Conservation District Board approved the plan, and a copy of the State Department of Land and Natural Resources Historic Preservation Division's comments to the plan;

(B) the conservation plan does not alter the drainage pattern;

(C) the land covered by the conservation plan is identified through mapping and numbers by tax map key parcels;

(D) the conservation plan includes best agricultural management practices; and

(E) the applicant gives written authorization for the County Engineer to inspect the applicant's files held by the Soil and Water Conservation Districts and the U.S. Department of Agriculture Natural Resources Conservation Service.

(2) The County Engineer shall:

(A) attend all meetings of the Soil and Water Conservation District Boards at which a soil and water conservation plan may be approved; and

(B) indicate whether the Department of Public Works has record of any prior or pending violations of this Article for the subject property, or any other matter relevant to the Board's decision whether to approve the plan.

(3) Upon a showing of necessity, the County Engineer may require an applicant to produce a topography map showing specific fields or areas on which the agricultural operations will occur, before the exemption is effective, where the plan covers 15 acres or more.

(4) The County Engineer shall issue to the applicant a written decision within thirty (30) days of receiving a copy of the plan with the supporting documentation specified above.

(5) This exemption shall terminate upon cancellation of the plan by the Soil and Water Conservation District Directors or upon cancellation of the exemption by the County Engineer.

(6) Any grading, grubbing, or stockpiling beyond the scope of the plan is subject to the requirements of this Article and may be enforced in accordance with the provisions of this Article.

(7) Any exemption granted under this section shall terminate ten (10) years after the Board's approval, unless the plan, with appropriate modifications, is reviewed and re-approved by the Soil and Water Conservation District Board.

(f) Excavation or fill that does not unreasonably alter the general drainage pattern to the detriment of abutting properties, does not exceed one hundred (100) cubic yards of



(A) the applicant submits a copy of the conservation plan to the County Engineer, accompanied by written verification that the Soil and Water Conservation District Board approved the plan, and a copy of the State Department of Land and Natural Resources Historic Preservation Division's comments to the plan;

(B) the conservation plan does not alter the drainage pattern;

(C) the land covered by the conservation plan is identified through mapping and numbers by tax map key parcels;

(D) the conservation plan includes best agricultural management practices; and

(E) the applicant gives written authorization for the County Engineer to inspect the applicant's files held by the Soil and Water Conservation Districts and the U.S. Department of Agriculture Natural Resources Conservation Service.

(2) The County Engineer shall:

(A) attend all meetings of the Soil and Water Conservation District Boards at which a soil and water conservation plan may be approved; and

(B) indicate whether the Department of Public Works has record of any prior or pending violations of this Article for the subject property, or any other matter relevant to the Board's decision whether to approve the plan.

(3) Upon a showing of necessity, the County Engineer may require an applicant to produce a topography map showing specific fields or areas on which the agricultural operations will occur, before the exemption is effective, where the plan covers 15 acres or more.

(4) The County Engineer shall issue to the applicant a written decision within thirty (30) days of receiving a copy of the plan with the supporting documentation specified above.

(5) This exemption shall terminate upon cancellation of the plan by the Soil and Water Conservation District Directors or upon cancellation of the exemption by the County Engineer.

(6) Any grading, grubbing, or stockpiling beyond the scope of the plan is subject to the requirements of this Article and may be enforced in accordance with the provisions of this Article.

(7) Any exemption granted under this section shall terminate ten (10) years after the Board's approval, unless the plan, with appropriate modifications, is reviewed and re-approved by the Soil and Water Conservation District Board.

(f) Excavation or fill that does not unreasonably alter the general drainage pattern to the detriment of abutting properties, does not exceed one hundred (100) cubic yards of

material on any one (1) site, and does not exceed five (5) feet in vertical height or depth at its deepest point.

(g) For excavation or fill that does not alter the general drainage pattern to the detriment of abutting properties, is over one hundred (100) but less than one hundred fifty (150) cubic yards of material on any one (1) site, and does not exceed five (5) feet in vertical height or depth at its deepest point from the original grade, in lieu of obtaining a permit, a Notice of Intent shall be filed with, and on a form furnished by, the Engineering Division, Department of Public Works, at least ten (10) business days before the work begins.

(h) Grubbing that does not unreasonably alter the general drainage pattern to the detriment of abutting properties and does not exceed a total area of one (1) acre.

(i) Exploratory excavations not to be incorporated in the anticipated project under the direction of an Engineer for the purpose of subsurface investigation provided that these excavations will be filled in a reasonable period of time and provided that the County Engineer is advised in writing prior to the start of the excavations.

(j) Trenching and backfilling for installation of utility and drainage conduits.

(k) Historic/cultural restoration work for a non-profit organization as described in Internal Revenue Code Section 501(c)(3), where a permit application is approved. Permit fees and bond requirements are waived for work commenced after approval of such application.

Notwithstanding the exemptions contained herein, the activities described in Sec. 22-7.6 (b), (f), (g), and (h) shall be subject to the requirements of Sec. 22-7.17 (a), (c), (d), (e), (f), (g), and (i) and Sec. 22-7.18 (a), (b), and (c). All exemptions are subject to the requirements of Sec. 22-7.5. (Ord. No. 262, July 23, 1975; Sec. 22-7.6, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.7 Recordation Of Decision Of The County Engineer.**

Decisions of the County Engineer made in accordance with the provisions of this Article, and decisions involving variations from the standards referred to in this Article shall be made a matter of record in the permit file. (Ord. No. 262, July 23, 1975; Sec. 22-7.8, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.8 Permit required.**

Unless excluded under Section 22-7.6 of this Article, no grading, grubbing, or stockpiling shall be commenced or performed without a permit as prescribed in this Article. A separate grubbing permit is not required when grubbing activities are performed in conjunction with and as part of activities conducted pursuant to a validly issued grading permit. A permit or exemption pursuant to this Article does not obviate the need to obtain other permits or approvals.

(Ord. No. 262, July 23, 1975; Sec. 22-7.8, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.9 Application For Permit.**

(a) An applicant for a grading, grubbing, or stockpiling permit shall first file an application on a form furnished by the Engineering Division of the Department of Public Works, County of Kauai. The application shall be accompanied by two (2) sets of the supporting documents. Each application shall:

(1) Describe by tax key or street address the land on which the proposed work is to be done.

(2) State the estimated dates for the starting and completion of the proposed work.

(3) Show the names and addresses of the owner or owners of the property.

(4) Show the name of the permittee and the person who shall be responsible for the work, his or her contractors and employees and for requesting the inspections required in this Article. A person signing the application for the permittee shall present evidence satisfactory to the County Engineer that (s)he is authorized to act for the permittee.

(5) State the purpose of the work.

(6) State the dust control proposals to be utilized.

(b) Each application for a grading permit shall also be accompanied by plans and specifications, including:

(1) For all areas:

(A) A vicinity sketch map or plan adequately indicating the site location, property lines, easements and setbacks of the property on which the work is to be performed.

(B) Location of any buildings, structures and improvements on the property where the work is to be performed and location of any building or structure on adjacent land which is within fifteen (15) feet of the property to be graded.

(C) Elevations showing the topography of the existing ground by contours or other means and extending fifteen (15) feet into adjacent property.

(D) Elevation, dimensions, location, extent and the slopes of all proposed grading shown by contours or other means.

(E) The area in square feet of the land to be graded; and the quantities of excavation and fill involved.

(F) The location and description of any known historic properties or burial sites on the subject property.

(G) Any additional plans, drawings or calculations required by the County Engineer.

(2) There shall be the following additional requirements for grading applications for areas of

one (1) acre or more, grading in excess of 500 cubic yards, or where the land slope is greater than twenty per cent (20%).

(A) A contour map prepared by a surveyor or by an Engineer. This map shall include location and type of utility lines, structures, and dimensions and azimuths of property lines, easements and setbacks, name and location of street, roadways, and rights-of-way.

(B) A grading plan and specifications certified by an engineer. This plan shall show the location of all proposed structures, buildings, streets, utilities, permanent erosion control features, easements and other improvements where the grading work is to be performed, the contours of the land before grading and the finished conditions to be achieved by the proposed grading to be shown by contours, cross sections, spot elevations or other means.

(C) Where an area is proposed to be graded in increments, plans for the future development of the area.

(D) If the land is to be subdivided, the applicant shall obtain the tentative approval of the proposed subdivision from the Planning Commission and the tentative approval together with its date of approval shall be shown on the grading plan. The Planning Commission may make recommendations to the County Engineer pertaining to such elements of the grading relating to zoning, use and effect upon the optimum design or development of the area, the surrounding area, and the environment.

(E) A drainage and erosion control plan showing the scheme for controlling erosion and disposal of runoff water including details of temporary drainage control devices such as terraces, berms, ditches, culverts, subsurface drains, sedimentation basins, and erosion control planting, mulching, sprigging, or sodding; and

(F) A schedule of construction operations to accomplish temporary and permanent erosion control work. Where any operations are delayed for any reason, a revised schedule shall be submitted to the County Engineer together with a modification of the temporary drainage and erosion control plan as the County Engineer may require.

(3) The permittee shall submit an engineer's soils report under the following circumstances:

(A) For any deviation from height, slope and distance from property line requirement in Section 22-7.17.

(B) In an area with highly plastic or expansive soil.



(C) Where fill is to be placed over a wetland, swamp, pond, gully or lake.

(D) Where the fill material is highly plastic.

(E) Where the fill will support buildings unless otherwise waived by the County Engineer. The Engineer's soils report shall include:

(F) Data regarding the subsurface conditions at the site.

(G) The presence of ground water if detected.

(H) Recommended limits for the proposed grading.

(I) Recommended fill material and manner of placing it.

(J) Recommended heights and slopes of cut and fill sections.

(c) Each application for a grubbing permit shall also contain:

(A) A plot plan showing the location and property boundaries, easements and setbacks.

(B) An erosion and sediment control plan.

(C) A statement indicating the disposition of the grubbed material.

(d) An applicant for a stockpiling permit shall also furnish a plot plan showing the property lines, easements and setbacks and the location of the proposed stockpile, quantities, height of stockpile, life of stockpile, source of the material to be stockpiled and furnish any other information as may be required by the County Engineer, to control the creation of dust, drainage or sedimentation problems. Where stockpiling is for the purpose of surcharging to stabilize or consolidate an area, the County Engineer shall require the permittee to submit an engineer's soil report which shall include data on the effect surcharging will have on adjacent building or structure.

(e) All grading, grubbing or stockpiling permits and operations shall conform to the erosion and sedimentation control standards and guidelines established by the Department of Public Works in conformance with Act 249, SLH 1974. (Ord. No. 262, July 23, 1975; Ord. No. 294, October 21, 1976; Sec. 22-7.9, R.C.O. 1976; Sec. 22-7.9, 1978 Cumulative Supplement; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### Sec. 22-7.10 Compliance and Distribution.

(a) The Department of Public Works within ten (10) calendar days shall check the application for compliance for form and content as required under section 22-7.9. If the form and content of the application are not found to be in compliance, it shall be rejected and returned to the applicant.

(b) After the application has been preliminarily accepted, the Department of Public Works shall forward copies of the application to the Planning Department, the Department

of Water, the State Department of Health, the State Department of Land and Natural Resources, and any other affected agency or department for comment and approval. Any agency to which the application is referred shall have thirty (30) calendar days from the date of acceptance of the application to submit any comments, conditions, or approvals to the Department of Public Works for its review and consideration.

(c) The Department of Public Works shall then have 30 calendar days after all agencies have submitted comments to it to impose conditions to the grading, grubbing or stockpiling permit required by law, ordinance, rule, regulation or validly issued governmental permit. (Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### Sec. 22-7.11 Permit Limitations.

(a) The issuance of a grading permit shall constitute an authorization to do only that work described on the permit and on the plans and specifications approved by the County Engineer.

(b) Jurisdiction of other agencies. Permits issued under the requirements of this Article shall not relieve the owner of responsibility for securing required permits or approval for work regulated by any other code, department or division of any government agency.

(c) Conditions of approval. In granting any permit under this Article, the County Engineer:

(1) shall attach conditions as required by law, ordinance, rule, regulation or validly issued governmental permit or as recommended by the Historic Preservation Division of the Department of Land and Natural Resources to identify, preserve or protect historic properties and burial sites within the County of Kauai; and

(2) may attach such conditions as may be reasonably necessary to prevent nuisances or hazards to public or private property, health or welfare. The conditions may include, but shall not be limited to:

(i) Improvement of any existing grading to bring it up to the standards of this Article.

(ii) Requirements for fencing of excavations or fills which otherwise would be hazardous.

(iii) The route of travel over public streets so as to cause the least interference with general traffic and to eliminate damage to public streets.

(iv) Cleaning up the area. (Ord. No. 262, July 23, 1975; Sec. 22-7.10, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### Sec. 22-7.12 Permit Fees.

(a) The applicant shall pay to the Department of Public Works the cost for review and inspection of the work: a sum equal to one-half of one percent (1/2%) of the estimated

construction cost as determined by the County Engineer. Full payment of the applicable fee shall be made prior to issuing a permit.

(b) Fees for grading work for which inspectional fees are paid in conformance with the Subdivision Ordinance for the County of Kauai shall be a lump sum amount of Five Dollars (\$5).

(c) All fees are payable to the Director of Finance, County of Kauai and submitted to the Department of Public Works, County of Kauai.

(d) If work for which a permit is required by this Article has been commenced or performed without a permit, a permit shall be obtained retroactively provided that such work complies with or may be made to comply with this Article. The permit fees for work that has been commenced or performed without a permit shall be based on the schedule below. For grading and stockpiling permits:

Volume of Material	Permit fee
101 - 500 cy	\$ 500
501 - 1,000 cy	\$ 2,000
1,001 - 5,000 cy	\$10,000
5,001 - 10,000 cy	\$15,000
greater than 10,000 cy	\$25,000

For grubbing permits, the fee is \$1,000 per acre; provided that a minimum fee of \$1,000 shall be assessed.

(e) If the grading, grubbing, or stockpiling work accomplished or commenced cannot be made to comply with the provisions of this Article, the person(s) responsible for the initiation or accomplishment of the work shall restore the land as nearly as possible to its original condition and shall obtain a certificate of completion therefor from the County Engineer. Notwithstanding the above, neither the application for nor the issuance of a retroactive permit shall relieve any person from civil or criminal penalty for violation of this Article.

(f) If the grading, grubbing, or stockpiling work accomplished or commenced without a permit cannot be made to comply with the provisions of this Article, the person(s) responsible shall post a restoration bond executed by an acceptable surety in an amount sufficient, as determined by the County Engineer, to pay all costs of restoring the land as nearly as possible to its original condition in the event that the person(s) responsible do not satisfactorily perform the restoration. The restoration bond shall be maintained in force for a period of one (1) year after the restoration work has been completed and no certificate of completion for the work shall be issued by the County Engineer until one (1) year has elapsed after the physical work of the restoration has been completed. (Ord. No. 262, July 23, 1975; Sec. 22-7.11, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.13 Expiration Of Permits.**

(a) Every grading or grubbing permit shall expire and become void one (1) year after the date of issuance.

(b) Every grading or grubbing permit shall expire and become void unless the work permitted therein is started within six (6) months after the date of issuance, or if the work is suspended or abandoned at any time after the work is commenced for a period of ninety (90) days. Before the work can be recommenced, a new permit shall first be obtained to do so and the fee therefor shall be the fee as specified in Section 22-7.12. Permit fees for an expired permit shall not be refunded, even if no work has commenced.

(c) Every stockpiling permit shall expire and become void one (1) year after the date of issuance and all stockpiled material temporarily stored on the premises shall be removed from the premises or used on the premises as fill material under a grading permit.

(d) Upon written application, the County Engineer may grant an extension or renewal for an expired grading, grubbing, or stockpiling permit. In granting an extension or renewal, the County Engineer may attach conditions as appropriate to prevent the creation and maintenance of a nuisance or hazard to individuals and property. The permit fee for extension or renewal shall be the fee as specified in Section 22-7.12. (Ord. No. 262, July 23, 1975; Sec. 22-7.12, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.14 Denial Of Permit; County Liability.**

The County Engineer shall deny the grading, grubbing or stockpiling permit if he finds that the work as proposed by the applicant is likely to endanger any property or public way or structure, endanger the public health, safety or welfare or if the grading, grubbing or stockpiling as proposed by the applicant would constitute a violation of a state or county law protecting historic properties or burial sites. Factors to be considered in determining probability of hazardous conditions shall include, but not be limited to, possible saturation of the ground by rains, earth movements, dangerous geological conditions or flood hazards, undesirable surface water run-off, subsurface conditions such as the stratification and faulting of rock, nature and type of soil or rock. Failure of the County Engineer to observe or recognize hazardous conditions or his failure to deny the grading, grubbing or stockpiling permit shall not relieve the permittee or his agent from being responsible, nor cause the County, its officers or agents, to be held responsible for the conditions or damages resulting therefrom. (Ord. No. 262, July 23, 1975; Sec. 22-7.13, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.15 Suspension Or Revocation Of Permit.**

(a) The County Engineer may, in writing, suspend or revoke a permit issued under the provisions of this Article

whenever the permit has been issued on the basis of incorrect information supplied by the permittee; or whenever the grading, grubbing or stockpiling is not being performed in accordance with the terms and provisions of the permit; or whenever it is determined that the permittee had not complied with this Article or any provision of any other applicable law, ordinance, rule or regulation of the State of Hawaii or the County of Kauai; or whenever the grading, grubbing or stockpiling discloses conditions that are unsafe as determined by the County Engineer. Where a permit is revoked for any reason, there shall be no refund of any permit fee.

(b) When a permit has been suspended or revoked the permittee shall submit detailed plans and proposals for compliance with the provisions of this Article, and any other applicable laws, ordinances, rules or regulations of the State of Hawaii, or the County of Kauai and for correcting the objectionable or unsafe conditions. Upon approval of the plans and proposals, the County Engineer may, in writing, authorize the permittee to proceed with the work.

(c) When a permit has been suspended or revoked and the permittee fails to take corrective action specified above within thirty (30) days following the suspension or revocation, the County Engineer may correct the deficiencies described in sub-section (a) and the permittee or his sureties shall be liable for the cost thereof. (Ord. No. 262, July 23, 1975; Sec. 22-7.14, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.16 Bond.**

(a) Bond Required. A grading permit or stockpiling permit shall not be issued unless the permittee shall first post a bond conforming to the requirements of this Section, for the benefit of the County of Kauai, except that a bond is not required for grading fewer than 500 cubic yards that is not for retaining wall construction within the setback distances from the lot line for cut or fill slope. If the proposed grading or stockpiling is to be performed under an approved subdivision final map and a subdivision agreement or bond or other security has been approved and accepted by the County under the Subdivision rules and regulations of the County of Kauai and which covers the grading or stockpiling work, then the County Engineer shall not require a bond for grading or stockpiling. A copy of the approved and accepted subdivision bond or other security shall be presented as evidence by the applicant for a grading or stockpiling permit. At the option of the applicant, he may either file a bond guaranteed by a surety company duly authorized to transact business within the State of Hawaii, or he may deposit cash, certified check, certificate of deposit, stock or other securities, in lieu of a bond. No interest shall be paid by the County on cash deposits. The provisions in this Article relating to a surety bond shall be equally applicable to a cash deposit pledged as a bond.

(b) Amount of Bond. The amount of the bond shall be in an amount equal to fifty percent of the total cost of all work and services required to complete all of the work under the grading, grubbing or stockpiling permit as approved by the County Engineer. Cost estimates prepared by the Permittee shall be subject to approval by the County Engineer to determine the exact amount of the bond. The amount of the bond for a permit which is retroactively applied for pursuant to Section 22-7.12 shall be one hundred percent of the total cost of all work and services required to complete all of the work under the grading or stockpiling permit as approved by the County Engineer.

(c) Purposes and Conditions. The purpose of the bond shall be to insure that the work under the permit:

(1) Is completed in a manner which fulfills the requirements of this Article and any conditions imposed under the permit; or

(2) Should the work be abandoned prior to completion, is restored to a condition that: is consistent with the standards contained in this Article; minimizes any damages to any other properties, public ways or structures; protects the public health, safety or welfare; and satisfies any other applicable laws, ordinances, rules, regulations or validly issued governmental permit.

Each bond shall provide that the surety shall be held and firmly bound unto the County of Kauai to accomplish the purposes of the bond and to pay for any work necessary to accomplish such purposes and the Surety Company shall not terminate or cancel the bond until notified in writing by the County Engineer.

Nothing herein shall require the County of Kauai to do any work or expend any funds to accomplish the purposes of the bond other than that which can be paid for out of the proceeds of the bond.

(d) Period and Termination of Bond. The term of each bond shall begin upon the date of issuance of the permit and shall remain in effect for a period of thirty (30) days after certification by the County Engineer that the work has been completed. Stockpiling shall be removed and properly disposed of and the bared area shall be immediately grassed. Upon issuance of the certificate the County Engineer may authorize the reduction of the penal sum of the bond to an amount deemed by the County Engineer to insure the acceptability of the work. In the event of failure to complete the work or failure to comply with all of the conditions and terms of the permit, the County Engineer may enter in an agreement for the completion of any and all work to meet the requirements of the permit or to comply with this Article without termination of the bond. The surety and permittee shall be liable and shall pay for all necessary costs and expenses that may be incurred or expended by the County of Kauai in causing any and all of the required work to be done. (Ord. No. 262, July 23, 1975;

Sec. 22-7.15, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.17 Specifications for Grading, Grubbing And Stockpiling.**

(a) Slope Control:

(1) Height. Where a cut or fill is greater than fifteen (15) feet in height, terraces or benches shall be constructed at vertical intervals of fifteen (15) feet except that where only one (1) bench is required, it shall be at the midpoint. The minimum width of the terraces or benches shall be at least eight (8) feet and provided with drainage provisions to control erosion on the slope face and bench surface.

(2) Cut Slopes. Under the following soil conditions, no cut may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below. One-half (1/2) horizontal to one (1) vertical in unweathered rock or mudrock.

One (1) horizontal to one (1) vertical in decomposed rock.

One and one-half (1-1/2) to one (1) vertical in soils of low plasticity, cuts of any height in highly plastic soils shall be as recommended in the Engineer's soil report.

(3) Fill Slopes. Fill using non-expansive material shall not be steeper in slope than the ratio of two (2) horizontal to one (1) vertical, or one and one-half (1-1/2) horizontal to one (1) vertical in areas recommended in the Engineer's soil report.

(4) Distance from adjoining property line. The horizontal distance from the top of a cut slope or the bottom of a fill slope to an existing adjoining property line shall not be less than as follows:

Height of cut or fill	Distance from adjoining property line (in feet)
Zero feet to four (4) feet	2
More than four (4) feet to eight (8) feet	4
More than eight (8) feet to fifteen (15) feet	6
More than fifteen (15) feet	8

(5) Modifications. These requirements may be modified by the County Engineer when cuts or fills are supported by retaining walls approved by the Engineering Division or when the permittee submits an Engineer's soils report stating that the soil conditions will permit modifications, or when warranted by additional engineering data.

(b) Area opened. The maximum area of land that may be opened for grading or grubbing at any one time is ten (10) acres. The area of land that may be opened shall not exceed ten (10) acres unless detailed plans and schedules are

approved by the County Engineer that document or demonstrate the ability to control dust, erosion and pollution and to minimize storm damage, and authorization is issued by the State of Hawaii Department of Health under the provisions of the National Pollutant Discharge Elimination System (NPDES) Permit program. The permittee's drainage and erosion control plan shall be designed to ensure that the grading or grubbing activities will not cause or contribute to a violation of the State's basic water quality criteria (Hawaii Administrative Rules, Section 11-54-04). There shall also be procedures established for the maintenance of, inspections, and modifications to the system of erosion and sediment controls for the site as prescribed and approved by the County Engineer to prevent water quality violations. To control fugitive dust, measures such as the use of water wagons, sprinkler systems and dust fences shall be used to minimize any visible dust emissions from the construction site. If these measures do not prove to be effective, or if significant dust, erosion, pollution or storm damage problems occur, the County Engineer shall reduce the permissible open area to reasonably control and minimize such dust, erosion, pollution or storm damage problems.

(c) Fills. The requirements of paragraphs (1), (2), and (3) below may be modified if the permittee submits an Engineer's soils report recommending criteria for the proposed fill for its intended use, and the modifications are approved by the County Engineer.

(1) Fill material shall be selected to meet the requirements and conditions of the particular fill for which it is to be used. The fill material shall not contain trees, timber, plants, shrubbery, grass, and woody vegetation matter. Fill within the shoreline setback area as established by the Planning Department shall be of material compatible with the marine environment. The use of soil as fill is prohibited within any shoreline area, as defined by Sec. 205A-1, Haw. Rev. Stat., except for sand, as defined herein.

(2) Preparation of ground surface. Before placing fill or stockpiling, the natural ground surface shall be prepared by removing the vegetation and, if required by the County Engineer, shall be notched by a series of benches or have subsurface drains installed, or both. No fill shall be placed over any water spring, marsh, refuse dump, nor upon a soft, soggy or springy foundation.

(3) Placement and compaction. Fill materials shall be spread and compacted in a series of eight (8) inch layers (maximum) when compacted. Except for slopes, the fill shall be compacted to ninety percent (90%) of maximum density as determined by the most recent ASTM Soil Compaction Test D1557 or AASHTO T180.

(d) Vegetation. Whenever feasible, natural vegetation and top soil shall be retained. Trees, timber, plants, shrubbery and other woody vegetation, when displaced shall not be stored or deposited along the banks of any stream, river or



natural water course. After being displaced, the vegetation shall be disposed of or removed from the site at the earliest reasonable time, conforming to State Health Department Rules and availability of County or private solid waste facilities as they exist at that time, except where the County Engineer allows for the mulching of the greenwaste and its re-deposit onto the site.

(e) Drainage provisions. Adequate provisions shall be made to prevent surface waters from damaging the cut face of an excavation or the sloped surfaces of a fill. Proper drainage shall be provided to prevent the unwanted accumulation or retention of surface water. The County Engineer may require the drainage structures and pipes to be constructed or installed, which will reasonably minimize erosion damage and satisfactorily carry off surface waters. The flow of any existing and known natural underground or surface drainage shall not be impeded or changed so as to cause damage to surrounding properties.

(f) Debris prohibited. No person shall perform any grading operations so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties.

(g) No grubbing or grading shall take place within the Special Management Area (SMA) or the Shoreline Setback area, without first obtaining approval of an SMA and/or Shoreline Setback Variance permit, as required by the County Planning Department. Any grading of a coastal dune within the shoreline area or a frontal dune is prohibited, except that where a permit is issued under this Article, sand may be imported and placed on the area of the coastal dune mauka of the shoreline to rebuild or enhance the protective capacity and environmental quality of the coastal dune.

(h) Hours of operation. No work shall be done between the hours of 7:00 P.M. and 7:00 A.M. Monday through Friday, and no work shall be done on Saturdays, Sundays and holidays without the prior written permission of the County Engineer.

(i) Water and air pollution control. All operations shall be performed in conformance with the applicable provisions of the Water and Air Pollution Control and Water Quality Standards contained in the Administrative Rules, Department of Health, State of Hawaii, on Air and Water Pollution Control and Water Quality Standards.

(j) Report after grading. When grading involves cuts or fills for which an Engineer's soils report is required, the permittee shall submit a certification from the soil's engineer that the work was done in conformity to this Article and the Engineer's soils report. The report after grading shall contain information including but not limited to the following: engineering data of the fill material used; how it was placed and compacted; moisture during compaction; compacted density; preparation of the ground to be filled on; subdrains and other pertinent features of the cut or fill necessary for its stability.

(k) Notification of completion. The permittee or his agent shall notify the County Engineer or his representative when the grading operation is ready for final inspection. Certificate of completion shall be given upon completion and inspection of all work including installation of all drainage structures and their protective devices, completion of all planting in conformance with the approved plans and specifications, and the submission of the required reports and as-built grading plans whenever the completed work contains approved deviations from the original plans. Certificate of completion shall not be construed as relieving permittee from any of the requirements set out in Section 22-7.16. (Ord. No. 262, July 23, 1975; Sec. 22-7.17, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

**Sec. 22-7.18 Special Requirements.**

(a) Any person performing or causing to be performed any excavation or fill shall, at his own expense, provide the necessary means to prevent the movement of earth of the adjoining properties, to protect the improvements thereon, and to maintain the existing natural grade of adjoining properties. All grading and excavation work for which a permit is required shall be performed by a licensed contractor holding a Type A or C-17 Contractor's license.

(b) Any person performing or causing to be performed any excavation or fill shall be responsible for the maintenance or restoration of street pavements, sidewalks and curbs, and public utility facilities that may be affected by grading operations. The maintenance or restoration of street pavements, sidewalks and curbs shall be performed in accordance with the requirements of the County of Kauai and the maintenance and restoration of public utility facilities shall be in conformity with the standards of the public utility companies affected.

(c) Any person depositing or causing to be deposited, any silt or other debris in ditches, water courses, drainage facilities, and public roadways, shall remove the silt or other debris. In case the person shall fail, neglect or refuse to comply with the provisions of this Section within twenty-four (24) hours after written notice, served upon him, either by mail or by personal service, the County Engineer may proceed to remove the silt and other debris or to take any other action (s)he deems appropriate. The costs incurred for any action taken by the County Engineer shall be payable by the person or his sureties.

(d) At any stage of the grading, grubbing or stockpiling work, if the County Engineer finds that further work as authorized by an existing permit is likely to create soil erosion problems or to endanger health, safety or property, he may require safety precautions, which may include but shall not be limited to the construction of flatter exposed slopes; the construction of additional silting or sediment basins, drainage facilities or benches; removal of rocks, boulders, debris and other dangerous objects, if dislodged, are likely

to cause injury or damage; and the construction of fences or other suitable protective barriers.

(e) At any stage of the grading, grubbing or stockpiling operations, if further work as authorized by an existing permit is likely to create dust problems which may jeopardize health, property or the public welfare as determined by the State Department of Health in consideration of the air pollution control standards and regulations, the County Engineer may require additional dust control precautions and, if these additional precautions are not effective in controlling dust, may stop all operations. These additional dust control measures may include, but are not limited to, sprinkling water, applying mulch treated with bituminous material, and applying hydro mulch. (Ord. No. 262, July 23, 1975; Sec. 22-7.18, R.C.O. 1976; Ord. No. 695, August 28, 1995; Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.19 Inspection and Commencement Of Work.**

(a) Each permit issued under this Article shall be deemed to authorize the County Engineer to enter upon and to inspect the grading, grubbing or stockpiling operations, after at least 24 hours advance notice of the inspection is provided to the permittee. If the permittee expressly refuses permission for the inspection, the County Engineer shall obtain a warrant before proceeding with such inspection. This section shall not be construed to invalidate unannounced inspections authorized by a warrant or to invalidate unannounced and warrantless inspections where exigent circumstances exist.

(b) The permittee shall notify the County Engineer at least five (5) business days before the permittee or his or her agent begins any grading, grubbing or stockpiling. A copy of the permit, approved plans and specifications for grading, grubbing or stockpiling shall be made available at the request of the inspector.

(c) If the County Engineer finds that the work is not being done in conformance with this Article, the approved plans, or in accordance with accepted practices, the person in charge of the work shall be notified immediately of the non-conformity and of the corrective measures to be taken. Grading, grubbing, and stockpiling operations shall cease until corrective measures have been taken. If grading, grubbing, and stockpiling operations commence before corrective measures have been approved, the County Engineer shall report the violation to the Prosecuting Attorney for appropriate criminal action. (Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.20 Administrative Actions and Civil Penalties.**

In addition to any criminal penalties, any person violating this Article shall be subject to civil penalties as set forth herein. Within five (5) working days of the notification issued pursuant to Sec. 22-7.19(c), the County Engineer shall have the person served, by mail or personal delivery, with a notice of violation and order, pursuant to

this Article and such administrative rules as the County Engineer may adopt.

(a) Contents of the notice of violation. The notice shall include at least the following information:

- (1) date of the notice;
- (2) the name and address of the person noticed;
- (3) the section number of the provision or rule, or the number of the permit that has been violated;
- (4) the nature of the violation;
- (5) the location and date(s) of the violation, to the extent possible; and

(b) Contents of the order. The order may require the person to do any or all of the following:

- (1) cease and desist from the violation;
- (2) correct the violation at the person's own expense, before a date specified in the order;
- (3) pay a civil fine not to exceed \$10,000 per day for each day in which the violation persists; or
- (4) pay a monitoring fee not to exceed one percent (1%) of the project cost as provided in section 22-7.12(a) of this Article.

(c) Any person who has previously violated this Article shall be fined not less than \$1,000.

(d) The order shall state that:

- (1) it may be appealed within thirty (30) days to an administrative hearing and if not so appealed, it shall become final thirty (30) days after the date of its mailing or delivery; and

- (2) that the State of Hawaii Department of Commerce and Consumer Affairs (Contractors License Board) may be notified of the existence of the violation, upon finality of the order.

(e) Effect of order; right to appeal. The provisions of the order issued by the County Engineer under this section shall become final thirty (30) days after the mailing or delivery of the order. The person may appeal the order pursuant to Section 22-7.23 of this Article. However, such appeal shall not stay any provision of the order. (Ord. No. 808, October 10, 2003)

#### **Sec. 22-7.21 Criminal Penalties.**

(a) It shall be unlawful for any person to do any act forbidden, or to fail to perform any act required, by the provisions of this Article. Any person convicted of violating any provision of this Article shall be guilty of a misdemeanor. A separate offense is committed upon each day during or on which a violation occurs or continues.

(b) Continuing violation. The failure to comply with the requirements set forth under the provisions of this Article shall be deemed a new offense for each day of such non-compliance.

(c) If the person fails to comply with the contents of the order issued pursuant to Sec. 22-7.20(b) within the specified time, the County Engineer shall refer the case

to the Prosecuting Attorney for appropriate criminal action, except if the case is pending appeal pursuant to Sec. 22-7.23. In the case of an appeal, all affirmed violations shall be immediately forwarded to the Prosecuting Attorney. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.22 Correction of Hazardous Conditions.**

(a) Whenever the County Engineer determines that existing grading, grubbing, or stockpiling is or may become a hazard to public health and safety, endangers property or natural resources, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner or other person in control of the property upon which the hazardous condition arose, upon receipt of notice in writing from the County Engineer, shall commence correction of the hazardous condition within 24 hours.

(b) If the owner or other person in control of the property upon which the hazardous condition arose fails to comply therewith, or if through reasonable efforts the County Engineer is unable to contact either one of them, then the County Engineer may cause the hazardous condition to be corrected at their expense - jointly and severally. If the owner or other person in control of the property within thirty (30) days thereafter fails, neglects, or refuses to pay the County the expense incurred thereby, the County Engineer may add the cost to any County taxes, fees, or charges, as provided in section 22-7.24 of this Article.

(c) If grading, grubbing, or stockpiling work is necessary to avoid imminent substantial harm to public health and safety, property or natural resources, the County Engineer may waive the requirements of this Article. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.23 Administrative Appeals.**

(a) Administrative appeals. Any person aggrieved by a decision of the County Engineer in the administration of this Article may, within thirty (30) days, appeal the decision to a hearings officer appointed by the County Engineer or the Building Board of Appeals if the Building Code so authorizes. The hearings officer or Building Board of Appeals may affirm the decision of the County Engineer or may reverse or modify the decision if the decision is:

- (1) in violation of this Article or other applicable law;
- (2) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(b) Hearings Officer. The County Engineer shall have the discretion to appoint a hearings officer, who shall not be an employee of the Department of Public Works.

(c) The hearings officer or the Building Board of Appeals may not waive the requirements of this Article.

(d) The County Engineer shall adopt rules of procedure for the administration of this section, pursuant to Hawaii Revised Statutes Chapter 91. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.24 Collection of Fines.**

(a) Collection of unpaid civil fines. In addition to any other procedures for the collection of unpaid civil fines available to the County by law, the County may add unpaid civil fines as herein defined to any County taxes, fees or charges, except for residential water or sewer charges, if the person(s) or entity fined have exhausted all appeal rights, including judicial appeal rights pursuant to Hawaii Revised Statutes 91-14.

(b) Judicial enforcement of order. The County Engineer may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the County Engineer need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner and has not been paid. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.25 Issuance of permit.**

All County departments, officials, and public employees vested with the duty or authority to issue permits, licenses, or certificates of occupancy shall conform to the provisions of this Article, and shall not issue permits, licenses, or certificates of occupancy for construction, development, uses, or other purposes if there is a conflict with the provisions of this Article. No such permits, licenses, or certificates of occupancy shall be issued for any property that has outstanding violations of this Article. Any permits, licenses, or certificates of occupancy, if issued in conflict with the provisions of this Article, shall be void. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.26 Liability.**

The provisions of this Article shall not be construed to relieve or alleviate the liability of any person for damages resulting from performing, or causing to be performed, any grading, grubbing or stockpiling operation. The County and its officers and employees shall be free from any liability, cost or damage that may accrue from any grading, grubbing or stockpiling or any work connected therewith, authorized by this Article. (Ord. No. 808, October 10, 2003)

**Sec. 22-7.27 Rule-making powers.**

The County Engineer shall be empowered to promulgate rules and regulations pursuant to Hawaii Revised Statutes Chapter 91, for the implementation of the provisions of this Article. (Ord. No. 808, October 10, 2003)

**ARTICLE 8. PROHIBITION OF SMOKING IN CERTAIN AREAS**

**Sec. 22-8.1 Definitions**

"Bar" means a place devoted to the serving of alcoholic beverages for on-site consumption by patrons, where the service of food is only incidental to the consumption of alcoholic beverages, and where the bar submits to the County Department of Liquor Control records necessary, in the Liquor Department's judgment, to establish gross sales of food and alcoholic beverages for the prior calendar year. "Incidental" means that, for the prior calendar year, gross sales of food are less than one-third (1/3) of gross sales of alcoholic beverages. The Department of Liquor Control shall have the power to adopt administrative rules necessary to carry out the provisions of this definition.

"Commercial building" means a building occupied by two or more commercial tenants, but does not include bars.

"Hotel" shall have the meaning ascribed to it in K.C.C. Sec. 8-1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.





"H.R.S." means Haw. Rev. Stat., as amended.

"K.C.C." means the Kauai County Code 1987, as amended.

"Multifamily dwelling" shall have the same meaning as the term "dwelling, multi-family" in K.C.C. Sec. 8-1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.

"Nightclub" means a bar in which live entertainment or recorded music is provided and in which facilities for dancing by the patrons are provided.

"Open to the public" means areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities.

"Restaurant" means any retail eating establishment where food is served or provided for on-site consumption by seated patrons that is authorized by the state department of health to operate as a food establishment, including any private food establishment or club in which only members or their guests are permitted, but excluding a "bar". If a restaurant includes an area devoted to the serving of alcoholic beverages, that area shall be deemed part of the "restaurant", and not a separate "bar", under this Article. An establishment that is a "restaurant" shall have that status during all hours of its operation, except as otherwise defined in this Article as a "Part-time Restaurant/Bar."

"Part-time Restaurant/Bar" means an establishment that changes its use from that of a restaurant to a bar during a specified, posted time during its hours of operation. Signs shall be posted to indicate its hours of operation in which it serves as a restaurant and as a bar. Smoking shall be permitted only during the specified time the establishment operates as a bar. The hours of operation that the establishment operates as a bar shall be filed with the Department of Liquor Control.

"Retail store" means any establishment organized for retailing goods including, but not limited to, food and grocery stores.

"Separate open air area" means an area that is exposed to the environment by not more than three sides, and which may include, but not be limited to, pool areas and lobbies.

"Separate open air area of a restaurant" means areas, roofed or not, of a restaurant's premises where food and/or beverages are served that is separate from the main dining area that are exposed or open to the outside environment and include, but are not limited to, outdoor patios, lanais, gazebos, umbrella tables and other outdoor seating areas. An area is determined to be exposed or open if it is unenclosed or enclosed on at least three (3) sides by a barrier or wall of not more than four (4) feet high from the floor, or if the net area of the walls on each of the three (3) sides have a fifty percent (50%) or greater opening, provided that any barrier or wall shall not exceed four (4) feet in height from the floor. At least ten (10) feet of space shall separate the tables within the main dining area where no smoking is allowed

and the separate open air area of a restaurant where smoking is allowed.

"Small business" means those business establishments having not more than five employees working on the business premises per established workshift, excluding restaurants.

"Smoke" or "smoking" means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material; the personal habit commonly known as smoking, including smoking cigarettes, cigars, and pipe smoking. (Ord. No. 274, February 9, 1976; Sec. 2-8.1, R.C.O. 1976; Ord. No. 795, November 7, 2002)

#### **Sec. 22-8.2 Smoking Prohibited In Certain Areas.**

Except as otherwise provided in Chapter 22, Article 8, smoking shall be prohibited in the following places within the County of Kauai:

(a) Any restaurant, except as defined as a "Part-time Restaurant/Bar", only when operating as a bar, and a "separate open air area of a restaurant" in this Article.

(b) Elevators in buildings generally open to and used by the public, including elevators in apartment and other multi-unit residential buildings.

(c) Patient rooms, wards, waiting rooms, lobbies and public hallways of public and private health care facilities including, but not limited to, hospitals, clinics, and physicians' and dentists' offices.

(d) Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that the room, hall or auditorium is open to the public for such exhibitions.

(e) Museums, libraries and galleries.

(f) Any enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except any dwelling unit. As used in this paragraph (f), "dwelling unit" shall have the meaning ascribed to it in K.C.C. Sec. 8-1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.

In addition to those buildings owned, leased, operated, or maintained by the County where smoking is prohibited under this paragraph (f), the Fire Chief may prohibit smoking in any other building or enclosed area of public assemblage owned or operated by the County of Kauai when in his opinion to do so would promote the public health, welfare or safety. The Fire Chief may exercise his or her authority to prohibit smoking by posting signage pursuant to Sec. 22-8.4 (c).

(g) Except as provided in Sec. 22-8.3 or as limited by this paragraph (g), all areas in business or charitable establishments. For purposes of this paragraph (g), a "business" means any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes, and "business

establishment" includes, but is not limited to, any of the following establishments operated by a business:

- (1) Any school;
- (2) Any hotel, except individual hotel rooms, separate open air areas, and bars;
- (3) Any financial institution;
- (4) Any industrial, commercial or wholesale establishment;
- (5) Any utility;
- (6) Any retail establishment where goods or services are sold, leased or otherwise provided to the public or to another business including, but not limited to, food and grocery stores;
- (7) Any restaurant; provided that smoking shall be permitted in a restaurant under the following circumstances:

Smoking shall be permitted in a separate open air area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking pursuant to paragraph (i) of this Sec. 22-8.2.

(h) Rest rooms. Any rest room open to the public in places specified in this section.

(i) Notwithstanding Sec. 22-8.3, any area of any bar, hotel room, nightclub, or governmental property which has been designated by the owner, operator, manager or other persons having control of such property as a nonsmoking area and marked with a "no smoking" sign or signs.

(j) All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents including, but not limited to, lobbies, hallways, corridors, stairways, waiting areas, and recreation areas within multifamily dwellings. For purposes of this paragraph (j), "enclosed or partially enclosed areas" means areas closed in by a roof or overhang and at least one wall. An area commonly described as a lobby or roofed mall shall be deemed enclosed or partially enclosed for purposes of this paragraph.

(k) All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers including, but not limited to, common entrance areas, lobbies, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings.

(l) In the event the building is both a multifamily dwelling and a commercial building, all areas except for private residences.

(m) All areas within recreation areas or facilities under the maintenance of the Department of Public Works' Division of Parks and Recreation, except such areas within each area or facility as the department may, with the approval of the fire chief as to facilities, designate by appropriate signs as areas within which smoking is permitted. County

parks shall not constitute "recreation areas or facilities" within the meaning of this paragraph (m).

(n) Any child care, adult day care or health care facility. (Ord. No. 274, February 9, 1976; Sec. 22-8.2, R.C.O. 1976; Ord. No. 795, November 7, 2002)

#### Sec. 22-8.3 Exceptions.

Smoking shall not be prohibited in the following places:

- (a) Any bar;
- (b) Private residences, except when used as a child care, adult care or health care facility;
- (c) Any property owned, controlled or leased by state or federal government entities;
- (d) Any hotel room;
- (e) Small businesses, excluding restaurants;
- (f) "Part-time Restaurant/Bar" only during the posted, specific time the establishment operates as a bar;
- (g) Separate open air area of a restaurant. (Ord. No. 274, February 9, 1976; Sec. 22-8.3, R.C.O. 1976; Ord. No. 795, November 7, 2002)

#### Sec. 22-8.4 Signs.

(a) Clearly legible signs which include the words "Smoking Prohibited by Law" with letters of not less than one inch in height shall be conspicuously posted in all places where smoking is prohibited under this Chapter 22, Article 8.

The signs shall be posted by the owner, operator, manager or other person having control of such places. Alternative means of notification (individual place cards, film clips, etc.) may be employed if the effect thereof is equivalent to the notice given by the signs described in the preceding sentence.

(b) In the case of any "Part-time Restaurant/Bar" which permits smoking during the hours the establishment operates as a bar, the owner, operator, manager, or other person having control of the establishment shall post a clearly legible sign with letters of not less than one-inch in height, stating "SMOKING PROHIBITED BY LAW EXCEPT DURING THE HOURS OF \_\_\_\_\_ TO \_\_\_\_\_, WHEN OPERATING AS A BAR ONLY." This sign shall be conspicuously posted at all entrances normally used by the public.

(c) The Fire Chief shall exercise his or her authority to prohibit smoking pursuant to Sec. 22-8.2(f) by ordering that "Smoking Prohibited By Law" signs be erected in any such building or enclosed area of public assemblage.

(d) The removal, destruction, damaging or defacing of any sign authorized by this section by any person shall constitute a violation of this section.

(e) Any person violating the provisions of this section shall be issued a notice of violation and shall comply with the provisions of this section within ten (10) working days from the date of the issuance of the notice of violation. Thereafter, the penalty provisions of Sec. 22-8.5 shall apply. (Ord. No. 274, February 9, 1976; Sec. 22-8.4, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Section 22-8.5 Violation-Penalty.**

(a) It is unlawful for any person to smoke in a place within the County of Kauai where smoking is prohibited.

(b) Except as otherwise provided in this Chapter 22, Article 8, any person violating any provision of this Article shall be punished by a fine of \$50 per calendar day for each violation. Each day that the non-compliance exists shall constitute a separate violation. Each violation shall constitute a separate offense. (Ord. No. 274, February 9, 1976; Sec. 22-8.5, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Sec. 22-8.6 Enforcement--Administration.**

(a) Summons or Citation.

(1) There shall be provided for use by an officer or employee of the county duly authorized to issue a summons or citation, or any police officer, a form of summons or citation for use in citing violators of this Article which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and rules of the State of Hawaii and the County of Kauai.

(2) In every case, when a citation is issued, the original of the same shall be given to the violator; provided that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies.

(3) Every citation shall be numbered, and each carbon copy shall bear the same number as its original.

(b) Enforcement and administration of the provisions of Sec. 22-8.4 shall be under the jurisdiction of the Department of Public Works' Building Division. The Building Division shall have the power to formulate any applicable rules necessary to carry out the provisions of Sec. 22-8.4.

(c) Except as provided in paragraph (b) of this Sec. 22-8.6, enforcement of this article shall be the responsibility and be under the jurisdiction of the Kauai Police Department.

(d) In addition to the foregoing, any police officer or other officer or employee of the county duly authorized to issue a summons or citation may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been requested by the police officer or other duly authorized officer or employee to stop smoking. (Ord. No. 274, February 9, 1976; Sec. 22-8.6, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Sec. 22-8.7 Fire Code.**

Nothing in this Chapter 22, Article 8 shall be construed as superseding applicable fire code provisions in the Kauai County Code. Where conflicts between the provisions of this Chapter 22, Article 8 and the fire code exist or arise, the fire code provisions shall prevail and control. (Ord. No. 274, February 9, 1976; Sec. 22-8.7, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Sec. 22-8.8 Severability.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable. (Ord. No. 274, February 9, 1976; Sec. 22-8.8, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Sec. 22-8.9 Conflict with H.R.S. Chapter 328K.**

(a) If any provision of this Article conflicts with any provision of Part I of H.R.S. Chapter 328K, or any successor statute, the more stringent provision shall prevail and control.

(b) If any violation of this Article also constitutes a violation of H.R.S. Chapter 328K, or any successor statute, the violator shall be subject to the penalties and procedures set forth under this Article.

(c) This section shall not be deemed to limit the powers granted to the county under H.R.S. Sec. 328K-5(g) or any successor statute, to enforce, administer, and adopt rules necessary to carry out H.R.S. Sec. 328K-4, or any successor statute. (Ord. No. 274, February 9, 1976; Sec. 22-8.9, R.C.O. 1976; Ord. No. 795, November 7, 2002)

**Sec. 22-8.10 Mandatory Review.**

A mandatory review shall be held on this article 12 months after its effective date. (Ord. No. 795, November 7, 2002)

**ARTICLE 9. VACANT LOTS**

**Sec. 22-9.1 Findings And Purpose.**

The Council finds that there are numerous vacant lots in the County that are overrun with weeds, grass, trash and litter. The subdivision ordinance and the grading ordinance tend to control the problem, while subdivision is in process. Once the subdivision is completed and sold, the problem becomes difficult to control unless the owner of each lot is aware of the problem and properly maintains the vacant lot. The lack of maintenance of vacant lots has been

a continuing and recurring problem for the Council. Vacant lots with trash or dry vegetation are health and fire nuisances. The purpose of this Article is to impose upon the owner or person in control of a vacant lot the duty to maintain the lot in such a condition as to prevent the lot from becoming a fire, health, or sanitation nuisance. (Ord. No. 303, May 20, 1977; Sec. 22-9.1, 1978 Cumulative Supplement; Ord. No. 403, November 20, 1980)

#### Sec. 22-9.2 Definitions.

When used in this Article the following words or phrases shall have the meaning given in this Section unless it appears from the context that a different meaning is intended:

(1) "Maintenance Superintendent" shall mean the Superintendent, Maintenance Division, Department of Public Works of the County.

(2) "Cut" shall mean to trim, sever, shorten, reduce, mow, slash, or to otherwise control and dispose of weeds on property.

(3) "Owner" shall mean the fee simple owner, lessee of record, personal representative, receiver, trustee, property management agent, or any other individual who has control or possession of privately owned property.

(4) "Property" shall mean vacant lots in residentially zoned areas of R-4 or higher density.

(5) "Remove" shall mean to move, displace, shift, take away, haul or otherwise transfer garbage, trash and waste from property.

(6) "Vacant" shall mean unimproved and unoccupied.

(7) "Weeds" means vegetation of such nature, which has reached such growth, and is present in such quantity, that it constitutes a substantial risk of one or more of the following nuisances:

(A) The vegetation, when dry, is or will be a fire hazard.

(B) The vegetation is, or is naturally suited as a sheltering or breeding place for rats, mice, mosquitoes or other vermin or noxious insects.

(C) The vegetation overgrows or spreads upon abutting property.

(8) "Garbage" shall mean all animal and vegetable refuse or waste.

(9) "Trash" shall mean rubbish such as feathers, ashes, tin cans, paper, rags, boxes and glass and other nongarbage waste or refuse.

(10) "Waste" shall mean any object, substance or thing, of whatever kind of character, which, for any reason, may be or may have been thrown away, discarded,





or abandoned such as, but not limiting the generality of the foregoing:

(A) refrigerators, ranges, furniture, fixtures and other similar household items;

(B) vehicles, machinery, farm equipment, construction equipment, scrap iron of all kinds or any other similar item;

(C) debris from demolished structures or buildings;

(D) bulky wastes discharged by mercantile, industrial and other establishments; and

(E) all garbage and trash other than defined in (8) and (9) above.

(11) "Nuisance" means anything done or not done that should be done that causes damage, injury, inconvenience, annoyance or discomfort to another in the reasonable enjoyment of his or her right of property or person. (Ord. No. 303, May 20, 1977; Ord. No. 403, November 20, 1980)

**Sec. 22-9.3 Premises To Be Free Of Weeds, Garbage, Trash And Waste.**

(a) Duty of Owner. The owner of vacant property shall at all times maintain the property free of weeds, garbage, trash and waste that contribute to nuisance or hazard to health, safety or welfare of the neighborhood.

(b) Determination of Nuisance or Hazard. The Maintenance Superintendent shall, upon receipt of a written complaint that a violation of this Article exists, inspect personally or by any employee of his division the vacant property cited in the complaint. The determination of the Maintenance Superintendent that a violation exists shall be prima facie evidence of a violation of this Article. (Ord. No. 303, May 20, 1977; Sec. 22-9.2, 1978 Cumulative Supplement; Ord. No. 403, November 20, 1980)

**Sec. 22-9.4 Clearing Of Weeds, Garbage, Trash And Waste From Property.**

(a) Notice to remove. Upon notification by the Maintenance Superintendent that a violation exists, the County Attorney is hereby authorized and empowered to notify the owner of the property to properly cut and remove weeds, garbage, trash and waste located on such owner's property. Such notice shall be by certified mail, addressed to said owner at his last known address. A copy of said notice shall be posted on the property.

(b) Compliance period. The owner of such property shall be given sixty (60) calendar days after receiving notice to complete the cutting and removal of said weeds, garbage, trash or waste as described in the notice.

(c) Form of notice. The notice shall describe the work to be done and shall state that if the work is not

completed within sixty (60) calendar days after notice is given, the owner will be subject to prosecution and a fine pursuant to Section 22-9.5.

(d) Maintenance Superintendent to keep record. The Maintenance Superintendent shall cause to be kept in his office a permanent record containing:

(1) A description of each parcel of property for which notice to cut and remove weeds, garbage, trash and waste has been given;

(2) The name of the owner, if known; and

(3) The date on which such notice was mailed and posted. (Ord. No. 303, May 20, 1977; Sec. 22-9.4, 1978 Cumulative Supplement; Ord. No. 403, November 20, 1980)

#### **Sec. 22-9.5 Penalty.**

Any person convicted of violating any provision of this Article shall be subject to a fine not less than \$25.00 and not more than \$500.00. Each day after the lapse of the 60-day notice period that the hazard remains uncorrected shall constitute a separate violation. Prosecution shall be through the Public Prosecutor's Office. (Ord. No. 303, May 20, 1977; Sec. 22-9.5, 1978 Cumulative Supplement; Ord. No. 403, November 20, 1980)

#### **Sec. 22-9.6 Other Remedies.**

This Article does not preclude other remedies available at law. (Ord. No. 303, May 20, 1977; Ord. No. 403, November 20, 1980)

### **ARTICLE 10. DOG LICENSES AND REGULATIONS**

#### **Sec. 22-10.1 Purpose.**

An ordinance establishing dog license fees and regulations. (Ord. No. 310, June 9, 1977; Sec. 22-10.1, 1978 Cumulative Supplement)

#### **Sec. 22-10.2 License Fees; Applicability.**

(a) Any person owning or having custody control of a dog over three (3) months of age within the County shall pay a biennial license fee. Except as provided in Section 22-10.2(b) of this Article, dog licenses shall be issued by the County Treasurer upon payment of the fee as prescribed in the following schedule:

- |                                  |        |
|----------------------------------|--------|
| (1) For each unneutered male dog | \$6.00 |
| (2) For each unspayed female dog | \$6.00 |
| (3) For each neutered male dog   | \$2.00 |
| (4) For each spayed female dog   | \$2.00 |

The County Treasurer shall require that any person claiming that a dog is neutered or spayed provide proof thereof. Proof may consist of an affidavit signed by the duly

licensed veterinarian or other evidence deemed satisfactory by the Treasurer.

(b) Any person who has a current hunting license shall pay a biennial dog license fee of Six Dollars (\$6) for the first hunting dog and Two Dollars (\$2) for each additional dog. A hunting dog shall mean a breed of dog trained for the hunting of game for which the person paying the dog license fee has a current hunting license and is actively engaged in hunting such game during the period for which the dog license has been issued. (Ord. No. 310, June 9, 1977; Sec. 22-10.2, 1978 Cumulative Supplement; Ord. No. 404, December 24, 1980)

**Sec. 22-10.3 Imposition Of License Fee; Due Date.**

The biennial license fee shall be due and payable on January 2 of every odd-numbered year and it shall be paid before March 11 of every odd-numbered year, or within thirty (30) days after the exemption ceases in the case of dogs becoming subject to Chapter 143, H.R.S. For dogs becoming subject to licensing after December 31 of the first year, license fees will be charged only for the remaining year of the two-year licensing period. There will be no refunds for any unused portion of the license. (Ord. No. 310, June 9, 1977; Sec. 22-10.3, 1978 Cumulative Supplement; Ord. No. 404, December 24, 1980)

**Sec. 22-10.4 Kauai Humane Society; Issuance Of Licenses.**

The County Treasurer shall authorize personnel of the Kauai Humane Society to issue licenses and collect license fees at its animal shelter and other areas as provided for in this Article. All fees collected by personnel of the Kauai Humane Society shall be deposited with the County Treasurer on a weekly basis. The County Treasurer shall regulate all activities involved in such collections. (Ord. No. 310, June 9, 1977; Ord. No. 329, September 29, 1977; Sec. 22-10.4, 1978 Cumulative Supplement)

**Sec. 22-10.5 Dog Licenses And Regulations; Chapter 143, H.R.S.**

(a) All other provisions relating to dog licenses and license regulations shall be as set forth in Chapter 143, H.R.S.

(b) The license fees set forth in Section 22-10.2(a) and (b) shall apply to all dogs required to be licensed under Chapter 143, H.R.S. (Ord. No. 310, June 9, 1977; Sec. 22-10.5, 1978 Cumulative Supplement)

**ARTICLE 11. SUMMER HIRE PROGRAM****Sec. 22-11.1 Findings And Purpose.**

The Council finds that funds allocated to its summer hire program can be stretched to include additional hires if applicants can be assigned to private firms with the private firms paying one-half (1/2) of the wages. The arrangement would also provide practical training in the private sector thereby enhancing the employees' future employment potential. This Article is intended to provide for the arrangement, subject to the private employer being responsible for the full workers' compensation, unemployment insurance and other employee benefits. (Ord. No. 351, July 7, 1978; Sec. 22-11.1, 1978 Cumulative Supplement)

**Sec. 22-11.2 Summer Hire Program; Management And Operation.**

The Department of Economic Development, in its management and operation of the County's summer hire program, may contract with private firms to assign summer hire applicants to private firms, subject to the condition that private firms shall be liable for workers' compensation and unemployment insurance coverage and costs for all other employee benefits. The County may provide up to one-half (1/2) of the basic wage cost of such hires. (Ord. No. 351, July 7, 1978; Sec. 22-11.2, 1978 Cumulative Supplement)

**Sec. 22-11.3 Supervision By Private Firms.**

All referred applicants, if hired, shall be under the supervision of the private firms and shall be deemed employees of such firms. The County's support for such hires shall be limited to a six (6)-week work period during July and August. Referrals for this program shall be limited to the amount appropriated for the program. (Ord. No. 351, July 7, 1978; Sec. 22-11.3, 1978 Cumulative Supplement)

**Sec. 22-11.4 Referral Of Applicants.**

In referring applicants to private firms, the department shall consider the value and practical application of the type of service or training the personnel may acquire during their employment with the firms. (Ord. No. 351, July 7, 1978; Sec. 22-11.4, 1978 Cumulative Supplement)

**Sec. 22-11.5 Report And Evaluation.**

The Department of Economic Development shall submit a report and evaluation of the program upon conclusion of each summer program. (Ord. No. 351, July 7, 1978; Sec. 22-11.5, 1978 Cumulative Supplement)

**ARTICLE 12. USE OF MOTOR VEHICLES ON BEACHES****Sec. 22-12.1 Purpose.**

The purpose of this ordinance is to prevent persons from using beaches of the County of Kauai as race tracks for motor vehicles. The use of beaches as race tracks for motor vehicles causes annoying noises and endangers the health, safety and welfare of persons who desire to use the beaches for picnicking, fishing, camping, or swimming. This ordinance is not meant to prevent people from driving motor vehicles on beaches to transport people or supplies for picnicking, fishing, camping, or swimming. This ordinance is also intended to serve as an interim control until such time that the State DLNR formulates and implements appropriate rules and regulations governing this subject. (Ord. No. 386, June 9, 1980)

**Sec. 22-12.2 Definitions.**

When used in this Article, the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

- (1) "Motor Vehicle" means motor vehicles of all types, including go-carts, motorcycles, motor scooters, and dune buggies, whether such vehicle is licensed or unlicensed. (Ord. No. 386, June 9, 1980)

**Sec. 22-12.3 Unlawful To Drive Motor Vehicles On Beaches.**

No person shall drive any motor vehicle upon any beach of the County of Kauai, except to transport persons or supplies for picnicking, fishing, camping, or swimming. Driving a motor vehicle back and forth or racing on a beach shall be considered a prima facie violation of this Article. (Ord. No. 386, June 9, 1980)

**Sec. 22-12.4 Penalty.**

Any person convicted of violating any provision of this Article shall be punished by a fine not exceeding One Thousand Dollars (\$1,000). (Ord. No. 386, June 9, 1980)

**ARTICLE 13. GASOLINE DISTRIBUTION PLAN****Sec. 22-13.1 Findings And Purpose.**

The Council finds that from time to time there exists in the State of Hawaii and in the County of Kauai a critical shortage of gasoline.

The County of Kauai is authorized by Section 125C-11, Hawaii Revised Statutes, to provide by ordinance that the County is exempt from all or portions of a State plan providing for procurement, control, distribution and sale of petroleum products and that the County may operate a

petroleum product distribution plan tailored to its own specific needs. This Article is enacted pursuant to the authorization of and in compliance with the provisions of Section 125C-11, Hawaii Revised Statutes. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.2 Mayor To Adopt Plan.**

The Mayor is hereby empowered to take such measures as he deems appropriate to assess the quantity of gasoline currently available and projected as available in the future in relation to the quantity required to carry on the normal activities of the community, and shall establish and execute a plan for the orderly and equitable distribution of gasoline. The plan shall include provisions for priority needs, the hours of gasoline distribution, the quantity to be sold to each consumer on a daily, weekly or other periodic basis, and a method of equalizing the number of vehicles serviced in any single day. The plan shall provide for the relief of hardship situations including consumers needing gasoline for off-road vehicles, boats or stationary equipment. The plan may be in the form of rationing. To the extent permitted by law, the plan may regulate the distribution at all levels, including suppliers, dealers and consumers. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.3 Mayor To Seek Advice.**

The Mayor shall seek the advice and counsel of gasoline suppliers, dealers, contractors, farmers, businessmen and consumers in determining the existence of a critical situation and in formulating his plan. The details of his plan shall be brought to the public attention promptly. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.4 Adoption Of Gasoline Distribution Plan.**

The plan established and promulgated by the Mayor including any amendments thereto shall be the official gasoline distribution plan for the County of Kauai. The plan shall be promulgated by public notice through publication and radio broadcasts. Upon promulgation the plan and any rules and regulations relating thereto drafted by the Mayor shall have the force and effect of law as though enacted by the usual ordinance of the Council of the County of Kauai. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.5 Penalty.**

Any person convicted of any violation of the County of Kauai Gasoline Distribution Plan, and any rules and regulations pertaining thereto, as established by the Mayor, shall be fined not more than five hundred dollars (\$500.00) for each violation. The plan and the rules and regulations may also be enforced by injunction proceedings pursuant to law applicable to civil proceedings. No preliminary

injunction or restraining order shall be sought for the enforcement of the plan or any rule or regulation pertaining thereto. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.6 Expenditure Of Funds.**

The Mayor may expend any funds in the contingent fund and an additional sum not to exceed five hundred dollars (\$500.00) without further action by the Council to establish and promulgate the County of Kauai Gasoline Distribution Plan. (Ord. No. 368, July 5, 1979)

**Sec. 22-13.7 Alteration Of Plan.**

The Mayor or his authorized representative, upon changing circumstances regarding the gasoline allocation available, may alter the plan of distribution and the quantity allowed each consumer calculated on the total amount of gasoline available and varying amounts required by each class of consumers. (Ord. No. 368, July 5, 1979)

**ARTICLE 14. NOISE CONTROL**

**Sec. 22-14.1. Prohibited Noise.**

(a) It shall be unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated, any radio, tape recorder, cassette player, or other machine or device for reproducing sound, if it is located in or on any of the following:

(1) Any public property, including any public street, highway, building, sidewalk, park, or thoroughfare; or

(2) Any motor vehicle on a public street, highway, or public space;

and if the sound generated is audible at a distance of 30 feet from the device producing the sound.

(b) Possession by a person or persons of any of the machines or devices enumerated in subsection (a) shall be prima facie evidence that the person operates, or those persons operate, the machine or device. (Ord. No. 577, September 27, 1990)

**Sec. 22-14.2. Enforcement.**

(a) Powers of Arrest or Citation. Any authorized police officer shall issue a citation for any violation under this article, except they may arrest for instances when:

(1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator.

(2) When the alleged violator refuses to cease such person's illegal activity after being issued a citation.

(b) Citation.

(1) There shall be provided for use by authorized police officers, a form of citation for use in citing violators of this article which does not mandate physical arrest of such violators. The form and content of such citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the County of Kauai.

(2) In every case when a citation is issued, a copy of the same shall be given to the violator.

(3) Every citation shall be consecutively numbered and each carbon copy shall bear the name of its respective original. (Ord. No. 577, September 27, 1990)

**Sec. 22-14.3. Penalty.**

Any person convicted of a violation of the provisions of this article shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment in jail for not more than thirty days or both, for each offense. (Ord. No. 577, September 27, 1990)

**Sec. 22-14.4. Permits.**

(a) A permit for a temporary exemption from the provisions of this article may be issued by the chief of police or designee to commercial, religious, political, civic, charitable, athletic, and other organizations, or individuals, for activities such as carnivals, parades, fund raisers, fairs, bazaars, public speeches and meetings.

(b) The chief of police or designee shall prescribe a form of application for such a permit which shall be completed by the applicant and which, when completed, shall state the date, time of day, duration, and nature of the proposed activity, the reason for the proposed activity, the name of the person who shall be in charge of the proposed activity, and such other pertinent information as the chief shall desire.

(c) In determining whether to grant or deny an application for a permit hereunder, the chief or designee shall consider the information provided in the application together with the impact of the proposed noise on the health, safety and welfare of the residents of and visitors to the surrounding area. If more information is needed in order for the chief or designee to make a determination on the application, the chief or designee may request further information from the applicant by means of a supplemental application.



(d) The applicant shall submit the completed form, accompanied by a fee of five dollars (\$5), to the chief not later than five days prior to the proposed activity; thereafter, the chief or designee shall notify the applicant of the decision to grant or deny the permit within three days of the submission of the completed application and fee and any required supplemental application.

(e) The permit shall state the date, place, time, duration, and nature of the proposed activity, shall be in the possession of the person in charge of the activity, and shall be produced for inspection upon the request of any law enforcement officer.

(f) The chief or designee may issue a permit subject to conditions which shall be stated upon the permit, including limitations upon the sound level, duration, or time of day of the activity, or the requirement that breaks be taken in the activity.

(g) The chief may adopt rules not inconsistent herewith for the implementation of the permit system established in this section. Such rules may include provisions for waiver of the application fee in appropriate situations or for the granting of a permit when an application is received less than five days prior to the proposed activity. (Ord. No. 577, September 27, 1990; Ord. No. 592, September 26, 1991)

#### **Sec. 22-14.5 Exemptions.**

The following shall be exempt from the prohibitions set forth in this article:

(1) Activities of the County, State of Hawaii, or the United States; and

(2) Activities of private persons or entities acting within the permitted uses of a permit issued by the County, State of Hawaii, or the United States. (Ord. No. 577, September 27, 1990)

### **ARTICLE 15. OBNOXIOUS SUBSTANCES**

#### **Sec. 22-15.1 Findings and Purpose.**

The Council finds that the use and possession of devices capable of emitting gases or obnoxious substances by unauthorized persons creates a potential danger to the peace and well-being of the community at large, but that such devices when used by proper authorities, serve a useful purpose. Therefore, pursuant to the power granted in Article II of the Charter and Sec. 46-1.5, H.R.S., this Article is enacted to regulate and license the use and dissemination of devices emitting obnoxious substances. The terms of this article shall be liberally construed to effectuate the purpose stated herein. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.2 Definitions.**

As used in this article, unless the context clearly requires otherwise:

"Agency" means all such organizations, public and private, whose operations are determined by the chief of police to require the use of obnoxious substances to accomplish a proper purpose.

"Chief of police" means the chief of police of the County of Kauai or the chief of police's authorized subordinate.

"Devices" means all shells, cartridges, bombs, guns, or aerosol capable of emitting obnoxious substances in gas, vapor, liquid or solid form.

"Employee" means all officers, agents and employees of an agency whether or not such officer, agent or employee has been issued a permit.

"Gun" means all revolvers, pistols, rifles, fountain pen guns, riot guns, shot guns and cannons portable or fixed except those regularly manufactured, and used with firearm ammunition.

"Obnoxious substances" means chloracetophenone (CN), o-chlorobenzalmalononitrile (CS), oleo resin capsicum (OC), or any derivative thereof.

"Person" means the same as defined in Sec. 1-3.1, Kauai County Code 1987.

"Shell, cartridge or bomb" means all shells, cartridges or bombs capable of being discharged or exploded by the use of percussion caps, fuses, electricity or other means to cause or permit the release or emission of obnoxious substances. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.3 Prohibitions.**

(a) No person shall use any obnoxious substance device which is injurious to person or property, or which is nauseous, sickening, irritating or offensive to any of the senses, in order to injure, molest, discomfort, discommode or coerce another in the use or control of the individual's person or property.

(b) No person shall sell or offer for sale any obnoxious substance device to a person who does not have a permit issued in accordance with this Article.

(c) No person shall give or transfer any obnoxious substance device to a person who does not have a permit issued in accordance with this Article. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.4 Exceptions.**

(a) Government Law Enforcement Agencies. Notwithstanding the prohibitions and permit requirement established herein, government law enforcement agencies may purchase, possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances in carrying out their duties.

(b) Licensed Private Security Agencies. Notwithstanding the prohibitions and permit requirements established herein, private security officers who are employees of licensed private police or security agencies may purchase, possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances in carrying out their duties.

(c) Other Agencies. Notwithstanding the prohibitions and permit requirements established herein, employees of government and private organizations who, by necessity of their employment, are required to go on private property to carry out their duties may possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances, or animal repellents. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.5 Permits to acquire.**

(a) No person shall own or acquire the ownership of an obnoxious substance device, whether usable or unusable, serviceable or unserviceable, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the chief of police, a permit to acquire the ownership of an obnoxious substance device.

(b) The permit application form shall include but not be limited to, the applicant's name, address, sex, height, weight, date of birth, place of birth, Social Security number, and information regarding the applicant's mental health history.

(c) An applicant for a permit shall sign a waiver at the time of application, allowing the chief of police access to any records that have a bearing on the mental health of the applicant. The permit application form and the waiver form shall be prescribed by the county attorney.

(d) The permit application form shall be signed by the applicant and by the Chief of Police or designee. One copy of the permit shall be retained by the Chief of Police as a permanent official record.

(e) There shall be a one-time \$5 fee for the permit. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.6 Ownership or possession prohibited, when.**

(a) No person who is a fugitive from justice shall own, possess, or control any obnoxious substance device.

(b) No person who is under indictment for, or has waived indictment for, or has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug shall own, possess, or control any obnoxious substance device.

- (c) No person who:
  - (1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, H.R.S., or intoxicating liquor;
  - (2) Has been committed pursuant to section 333F-9, H.R.S., or 333F-10, H.R.S.;
  - (3) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411, H.R.S.; or
  - (4) Is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any obnoxious substance device unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.

(d) No person who is less than twenty-five years old and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug shall own, possess or control any obnoxious substance device.

(e) No minor under the age of eighteen years shall purchase, possess, or use any obnoxious substance device, and no vendor shall sell, offer for sale, or otherwise furnish any obnoxious substance device to a minor.

(f) Any person disqualified from ownership, possession, or control of an obnoxious substance device by this Article shall dispose of such obnoxious substance device in compliance with this Article. (Ord. No. 691, July 5, 1995)

#### **Sec. 22-15.7 Vendor to obtain license.**

(a) Any person, corporation, partnership or association vending the obnoxious substances enumerated herein shall first obtain a license from the director of finance.

(b) The vendor shall keep accurate records of the sale of said obnoxious substances including monthly inventories showing the quantity and type of devices received, inventories showing the quantity of devices on hand, accurate records of the sale of such devices including the name of the purchasing agency, date of purchase, type of obnoxious substances sold and the number of each type and such other records as the chief of police may require.

(c) The chief of police shall have access to the vendor's books and records pertaining to the purchase and sale of obnoxious substances at reasonable times during business hours.

(d) The sale of obnoxious substances shall be made in case sized units as packaged at the factory and unopened except that the unopened case may be placed in a container provided by the local vendor prior to the sale. Deliveries as provided for herein shall be made only by the personnel of the vendor or the delivery service which is listed on the vendor's permit required by this section. No permit shall be required for the personnel or delivery service making such deliveries.

(e) The one-time fee for a license under this section shall be \$25, which shall be payable to the director of finance. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.8 Violation-Penalty.**

Any person violating any provision of this article shall upon conviction be punished by a fine not exceeding \$2,000 or by imprisonment not exceeding one year or both, and upon such conviction, any permit or license issued to any person hereunder shall be revoked. (Ord. No. 691, July 5, 1995)

**Sec. 22-15.9 Severability.**

If any provision of this Article, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (Ord. No. 691, July 5, 1995)

**ARTICLE 16. DRAINAGE**

**Sec. 22-16.1 Purpose.**

The purpose of this Article is to provide drainage principles and policies as set forth in the Storm Water Runoff System Manual dated July 2001, and to safeguard the public health and safety, and to protect property in the County of Kauai. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.2 Title.**

This article shall be known as the "Drainage Ordinance." (Ord. No. 778, November 28, 2001)

**Sec. 22-16.3 Application.**

The provisions of this Article shall apply to all land within the jurisdictional boundaries of the County of Kauai, which includes the Islands of Kauai and Niihau, and shall apply to all facilities constructed within County rights-of-way, to easements dedicated for public use, and to privately-owned systems that are part of the required infrastructure improvements for a subdivision. The provisions of this Article shall supersede all prior resolutions, provided that all drainage approvals obtained prior to the adoption of this Article and the Storm Water Runoff System Manual shall remain in effect. The principles and policies set forth in the Storm Water Runoff System Manual are intended

to be minimum standards only and are not to be construed as a guarantee to property owners against flood or drainage damage. (Ord. No. 778, November 28, 2001)

#### **Sec. 22-16.4 Definitions.**

When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"County Engineer" means the County Engineer, Department of Public Works, County of Kauai, or his duly authorized representative.

"Designer" means any licensed professional civil engineer who designs or develops calculations, plans, specifications, construction, and as-built drawings for drainage systems or facilities under the supervision of an engineer.

"Discharge" means the deposit, disposal, injection, dumping, spilling, leaking, or placing of any substance into a drainage facility or natural watercourse.

"Drainage Problem" means the discharge of effluents or pollutants onto a public right of way and/or into a drainage facility which causes the hydraulic capacity of that drainage facility to be exceeded and results in flooding. The definition includes the discharge of a pollutant which reduces the hydraulic capacity of a drainage facility by the deposit of solids therein.

"Effluent" means any substance other than storm water runoff that is discharged onto a public right of way and/or into a drainage facility including nonstorm water discharges which are not sources of pollutants.

"Engineer" means a licensed professional civil engineer registered by the State of Hawaii to practice engineering in the discipline of civil engineering pursuant to Hawaii Revised Statutes Chapter 464, as amended.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

"Person" means corporations, estates, associations, partnerships, and trusts, as well as one or more individuals.

"Pollutant" means any waste, including but not limited to cooking or fuel oil, milk, juice, pesticide, paint, solvent, radioactive waste, hazardous substance, sewage, dredge spoils, chemical waste, rock, sand, biocide, toxic substance, construction waste and material, and soil sediment.

"Pollution Problem" means the discharge of any pollutant into state waters directly or by conveyance through a drainage facility which creates a nuisance or adversely affects the public health, safety or welfare, or causes a drainage facility to violate any water quality standards of the State of Hawaii.

"Property Owner" means the fee simple owner of record, lessee of record, administrator, administratrix, executor, executrix, personal representative, receiver, trustee, property management agent, or any other individual,

corporation, or unincorporated association which has the use, control, or occupation of land with claim of ownership, whether the owner's interest be in absolute fee or a lesser estate.

"State Waters" are defined in HRS Section 342D-1.

"Storm Water" means storm water runoff, surface runoff, street wash, or drainage and may include discharges from fire fighting.

"Storm Water Runoff System Manual" means the Storm Water Runoff Manual dated July 2001 and any subsequent amendments adopted through the Drainage Ordinance.

"Water Quality Standard" means the water quality standards adopted by the State of Hawaii pursuant to HRS Section 342D-5. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.5 Adoption.**

The Storm Water Runoff System Manual on file with the County Clerk dated July 2001 is hereby adopted by reference and made a part of this Article. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.6 Administration.**

The Department of Public Works shall administer the provisions of this Article and the Storm Water Runoff Drainage Manual. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.7 Review, Approval and Interpretation.**

A. The County Engineer shall review all drainage submittals for compliance with the Storm Water Runoff System Manual and this Article. An approval by the County Engineer shall not relieve any owner, engineer, or designer of the responsibility for ensuring that the calculations, plans, specifications, construction, and as-built drawings, are in compliance with the Storm Water Runoff System Manual and this Article and that the necessary or desired drainage objectives shall be accomplished.

B. The County Engineer shall interpret the Storm Water Runoff System Manual as needed. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.8 Amendment of the Storm Water Runoff System Manual.**

The Storm Water Runoff System Manual of the County of Kauai may be amended by ordinance. An amendment may change provisions of this Article, text provisions of the Storm Water Runoff System Manual, or any of these in combination. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.9 Discharge of Effluent Other Than Storm Water Runoff-Violation.**

A. No person shall discharge any effluent other than storm water runoff onto any public right of way and/or into a

drainage facility without the approval of the County Engineer. The County Engineer shall only approve discharges when such discharges shall not create drainage or pollution that is in violation of the State Water Quality Standards in Chapter 11-54, Hawaii Administrative Rules, as amended.

B. Any person desiring to discharge effluent other than storm water shall apply on forms prescribed by the County Engineer. Approval by the County Engineer shall be for the duration of the effluent discharge.

C. Any discharge which violates state water standards in Chapter 11-53, Hawaii Administrative Rules, as amended, shall also be a violation of this Article and shall result in a cease and desist order. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.10 Environmental Quality Control - Violation.**

A. It shall be unlawful for any person to discharge or cause to be discharged any pollutant into any drainage facility which causes a pollution problem in state waters, or causes a violation of the water quality standards of the State of Hawaii.

B. It shall be unlawful to discharge any storm water on any public right of way which creates a drainage problem or causes a nuisance.

C. The provisions of this section are not applicable to employees of the County who, during the performance of their duties or in cases of emergency or a hazardous substance spill, may discharge sewage, other pollutants, or wash water from cleanup operation of a hazardous substance spill, into a drainage facility.

D. Upon presentation of proper credentials, the County Engineer or his duly designated representatives may enter at reasonable times any building or premises in the discharge of the County Engineer's official duties, to inspect or investigate the discharge or any pollutant or effluent into or onto a drainage facility; provided, that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession; and provided, further, that an order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.11 Administrative Enforcement.**

If the County Engineer determines that any person is violating any provision of this Article, or any approvals granted pursuant thereto, the County Engineer may have the person served, by mail or delivery, with a Notice of Violation and Order. Whenever, a corporation violates any of the provisions of the Article, the violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who, in their capacity as directors, officers, or agents of such corporation, have authorized, ordered, or done any of the acts constituting in whole or in part such violation.



A. Contents of the Notice of Violation. The notice shall include at least the following information:

1. Date of the notice;
2. The name and address of the person served with the notice and the location of the violation;
3. The section number of the Ordinance, or other law which has been violated;
4. The nature of the violations; and
5. The deadline for compliance with the notice.

B. Contents of the Order. The order may require the person to do any or all of the following:

1. Cease and desist from the violation;
2. Correct the violation at the person's own expense before a date specified in the order; or
3. Appear before the County Engineer or a person designated by the County Engineer at a time and place specified in the order and answer the charges specified in the notice of violation. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.12 Judicial Enforcement of Order.**

The County Engineer may institute a civil action in any court of competent jurisdiction, for the enforcement of any order issued. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.13 Enforcement.**

A. Cease and Desist Order.

Whenever the County Engineer finds that a discharge of storm water or effluent or any pollutant is taking place or threatening to take place in violation of any ordinance, order, regulation, rule, or other law, the County Engineer may issue an order directing the property owner or discharger to cease and desist such discharges and directing the property owner or discharger to achieve compliance in accordance with a detailed time schedule of specific actions the property owner or discharger must take in order to correct or to prevent violations of this ordinance, regulation, order, rule or any other law. The County Engineer may order the revocation or suspension of any approvals. Any order issued by the County Engineer may require the property owner or discharger to provide information as the County Engineer deems necessary to explain the nature of the discharge. The County Engineer may require in any cease and desist order that the property owner or discharger pay to the County the costs of any inspection or monitoring which in the discretion of the County Engineer was necessary as a result of the violation.

B. Cleanup and Abatement Orders.

(1) Any person who is in violation of this Article, regulations, order, rule, or any other law, shall upon the County Engineer's order and at the total expense of the property owner or discharger, clean up the discharge and do whatever is necessary or required by the County Engineer to abate the effects of the violation.

(2) The County Engineer may initiate any cleanup, abatement or remedial work required that the County Engineer deems necessary as a result of the magnitude of the violation or when necessary to prevent harm to public health or the environment. The County Engineer may take this action, notwithstanding that injunctive relief and his action may be in addition to any action taken by the property owner, discharger, or other persons.

(3) Any property owner, permit holder, or discharger violating this Article, regulations, order, rule or any other law shall be liable to the County for costs incurred in the cleanup, abatement, or remedial action undertaken by the County Engineer, including but not limited to administrative costs, inspection costs, attorney's fees, or such other liability imposed upon the county by other agencies, persons, or organizations, whether by way of court action, or settlement.

C. Termination of discharge.

In addition to other remedies available and as provided in this Article, when the County Engineer determines, in his sole discretion, that the property owner or discharger has not or cannot demonstrate satisfactory progress toward compliance with the requirements of this Article, regulation, order, rule or other laws, the County Engineer, after providing written notice to the property owner or discharger by certified mail 30 days in advance of any action, may sever or plug the connection from the property owner's or discharger's system to the county-owned storm drainage system. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.14 Reconsideration.**

A. The property owner or discharger may petition the County Engineer for reconsideration the terms of the County Engineer's approval, its approval with modification, revocation, suspension, or denial, or the County Engineer's order, including but not limited to enforcement within 30 days of the County Engineer's final action on the matter to the County Engineer.

B. Failure to submit a timely petition for reconsideration shall be deemed to be a waiver of the petition for reconsideration.

C. In its petition, the petitioner must indicate the approval provisions to which he is interposing an objection, the reasons for his objection, and alternative conditions, if any, that he seeks to substitute in the approval; or the specific basis for his objection to the approval, approval with modification, suspension, revocation or denial.

D. The effectiveness of the approval issued herein or the County Engineer's final action regarding the approval, approval with modification, suspension, or revocation, or denial.

E. If the petition for reconsideration is not acted upon within 30 days by the County Engineer, the petition shall

be deemed to be denied and the property owner or discharger shall immediately comply with the terms of the approval or the County Engineer's final action regarding the approval, approval with modification, suspension, or revocation.

F. The County Engineer will send property owners or dischargers by certified mail, approvals, approvals with modifications. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.15 Violations Provisions.**

**A. Criminal Penalties.**

Any person:

(1) Who willfully, intentionally, recklessly or negligently violates any provision of this Article, order, approval, or any other requirement, shall upon conviction be punished by a fine not less than \$1,000.00 nor more than \$25,000.00 or by imprisonment not exceeding 90 days, or both, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense; or

(2) Who knowingly makes any false statement or misrepresentation in any record, report, plan, or other document filed with the County Engineer, or tampers with or knowingly renders inaccurate any monitoring device or sampling and analysis method shall be punished by a fine of not more than \$25,000.00 or by imprisonment for not more than six months, or both. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.16 Nonliability of Department Personnel.**

Notwithstanding any other law to the contrary, no employee or officer of the Department of Public Works shall be civilly or criminally liable or responsible under this Ordinance for any acts done by the employee or officer, in their performance of the officer's or employee's duties. (Ord. No. 778, November 28, 2001)

**Sec. 22-16.17 Decision of the County Engineer.**

Decisions of the County Engineer made in accordance with the provisions of this Article and/or decisions involving variations from the standards set forth in the Storm Water Runoff System Manual shall be made a matter of record in the application/project files. (Ord. No. 778, November 28, 2001)

ARTICLE 17. DANGEROUS DOG ORDINANCE

Section 22 -17.1 Purpose

The purpose of this ordinance is to establish provisions concerning dangerous dogs:

(1) The intent of this ordinance is to provide protective measures for the people of Kauai County from a known dangerous dog and establish conditions and penalties that may be imposed upon the owners of dangerous dogs.

(2) Hawaii Revised Statutes Section 142-75(c) authorizes counties to enact and enforce ordinances regulating persons who own, keep, or harbor any dog that has bitten, injured, or maimed a person. Accordingly, the intent of this ordinance is to prevent potential conflicts with the provisions of State statute. (Ord. No. 792, October 15, 2002)

Section 22-17.2 Definitions

Wherever used in this article the following words or phrases shall have the meaning given in this section unless it shall be apparent from the context that a different meaning is intended:

"Animal" means any pet animal, farm animal, or poultry maintained on a person's property for the purpose of companionship, for hobby, for legal sporting activities, for guarding of property or for commercial purposes.

"Attack" means aggressive physical contact with a person or animal initiated by the dog which may include, but is not limited to, the dog jumping on, leaping at or biting a person or animal.

"Bodily injury" means the same as that term is defined in HRS Section 707-700.

"County animal control service" means the animal control services provider contracted by the county to keep stray or unlicensed dogs.

"Dangerous dog" means any dog which, without provocation, attacks a person or animal.

"Enforcement officer" means any person authorized and designated to enforce the provisions of this article.

"Owner" means any person owning, harboring or keeping a dog; provided that if the owner is a minor under the age of 18 yrs., the parents, guardian or other person having the care, custody or control of the minor shall be rebuttably presumed to the owner. The person to whom a license was issued pursuant to HRS Section 143-2 shall rebuttably be presumed to be the owner of the dog for purposes of this section.

"Provocation" means the attack by a dog upon a person or animal was precipitated under the following circumstances:

(1) The dog was protecting or defending its owner or a member of its owner's household from an attack or assault;

(2) The dog attacked the person in the owner's dwelling, after the person entered or remained in the dwelling unlawfully.

(3) The dog attacked the person on the owner's property, except that when the person attacked suffers substantial or serious bodily injury, or death, this subsection shall not apply.

(4) The person attacked was teasing, tormenting, abusing or assaulting the dog or at any time in the past had teased, tormented, abused or assaulted the dog;

(5) The dog was attacked or menaced by the animal;

(6) The dog was responding to pain or injury inflicted by the attacked person or animal; or

(7) The dog was protecting its offspring from the attacked person or animal.

"Serious bodily injury" means the same as that term is defined in HRS Section 707-700.

"Serious injury to an animal" means physical injury to the animal involving a broken bone, a laceration requiring multiple stitches, a concussion, or a tearing or rupture of an organ.

"Substantial bodily injury" means the same as that term is defined in HRS Section 707-700. (Ord. No. 792, October 15, 2002)

**Section 22-17.3 Prohibited Acts; Conditions On Owner; Penalties.**

(a) A dog owner commits the offense of negligent failure to control a dangerous dog, if the person negligently fails to take reasonable measures to prevent the dog from attacking a person or animal and such attack results in:

(1) the maiming or causing of serious injury to or the destruction of an animal or

(2) bodily injury to a person.

A person convicted under this subsection shall be guilty of a petty misdemeanor and sentenced in accordance with subsections (c), (d), and (e).

In any prosecution under this section, it is an affirmative defense that the attack was caused by provocation, as defined herein. The defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts that establish provocation.

(b) For the purposes of this section, "reasonable measures to prevent the dog from attacking" shall include but not be limited to:

(1) measures required to be taken under Article 2 of this chapter to prevent the dog from becoming a stray; and

(2) any conditions imposed by the court for the training of the dog or owner or for the supervision, confinement or restraint of the dog for a previous conviction under this section.

(c) A dog owner convicted under subsection (a) shall be sentenced to one or more of the following:

(1) A fine of not less than \$50 nor more than \$1,000;

(2) A period of imprisonment of up to 30 days, or in lieu of imprisonment, a period of probation of not more than six months in accordance with the procedures, terms, and conditions provided in HRS Chapter 706, Part II;

(3) Restitution to any individual who has suffered bodily injury or property damage as a result of an attack by the dog[;].

(d) Unless the dog has been or is ordered to be humanely destroyed, the dog owner shall also be sentenced to the following mandatory provisions, in addition to the provisions of subsection (c):

(1) The owner shall provide his/her name, address and telephone number to the county animal control service;

(2) The owner shall provide the location at which the dog is currently kept, if such location is not the owner's address;

(3) The owner shall promptly notify the appropriate animal control service of:

(A) Any changes in the ownership of the dog or the location of the dog along with the names, addresses and telephone numbers of new owners or the new address at which the dog is located;

(B) Any further instances of an attack by the dog upon a person or an animal;

(C) Any claims made or lawsuits brought as a result of further instances of an attack by the dog; or

(D) The death of the dog.

(4) The owner shall obtain a license for the dog pursuant to HRS Section 143-2, if the dog is not currently licensed; and

(5) Unless already identified by microchip, the dog shall be permanently identified, at the owner's expense, by injecting in to the dog an identification microchip using standard veterinary procedures and practices. The microchip identification number of the dog shall be provided to the county animal control service.

(e) In addition to the provisions of subsection (c) and (d), the dog owner may also be sentenced to any of the following terms or conditions:

(1) When indoors, the dog shall be under the control of a person eighteen years of age or older;

(2) When outdoors and unattended, the dog shall be kept within a locked fenced or walled area from which it cannot escape; or an escape-proof kennel;

(3) When outdoors, the dog shall be attended and kept on a leash no longer than six feet in length and under the control of a person eighteen years of age or older;

(4) When outdoors, the dog shall be attended and muzzled with a muzzle that prevents the dog from biting any person or animal but does not cause injury to the dog or interfere with its vision or respiration;

(5) A sign or signs shall be placed in a location or locations directed by the court advising the public of the presence and dangerousness of the dog;

(6) The owner and dog, at the owner's expense, shall attend training sessions conducted by an animal behaviorist, a licensed veterinarian or other recognized expert in the field;

(7) The dog shall be neutered or spayed at the owner's expense, unless the neutering or spaying of the dog is medically contraindicated;

(8) The owner shall procure liability insurance or post bond of not less than \$50,000, or for a higher amount if the court finds a higher amount appropriate to cover the medical and/or veterinary costs resulting from potential future actions of the dog;

(9) The dog shall be humanely destroyed; or

(10) Any other condition the court deems necessary to restrain or control the dog.

For the purpose of this subsection:

An escape-proof kennel means a kennel which allows the dog to stand normally and without restriction, which is at least two and one half times the length of the dog, and which protects the dog from the elements.

Fencing or wall material required under this section shall not have openings with a diameter of more than two inches, and in the case of wooden fences, the gaps therein shall not be more than two inches.

Any gates within such kennel or structure shall be lockable and of such design as to prevent the entry of children or the escape of the dog, and when the dog is confined to such kennel or area and unattended, such locks shall be kept locked.

The kennel may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.

(f) Upon probable cause, an enforcement officer may either arrest or issue a summons and citation to the owner for violation of subsection (a).

(g) The court shall hold a hearing on the alleged violation of subsection (a) within 30 days of the arrest or issuance of the citation, or as soon as practicable. (Ord. No. 792, October 15, 2002)

#### **Section 22-17.4 Citation And Summons - Seizure - Relinquishment Of Ownership**

Upon finding probable cause to believe that there has been a violation of Section 22-17.3(a), an enforcement officer may, in addition to arresting or issuing a summons and citation to the owner pursuant to Section 22-17.3, have the dog seized and impounded if the dog is posing an imminent

threat to human beings or to other animals. At the owner's request, such impoundment may be at the premises of a licensed veterinarian or at a commercial kennel of the owner's choosing. All expenses of the boarding and retention of the dog shall be borne by the owner.

If a dog is seized and impounded pursuant to this section, the citation shall notify the owner that if he or she does not appear at the time and place stated in the summons, the dog shall be subject to relinquishment.

Any person who refuses to surrender a dog that is subject to seizure and impoundment pursuant to this section shall be guilty of a petty misdemeanor and fined not less than \$50 nor more than \$1,000, imprisoned not more than 30 days, or both. (Ord. No. 792, October 15, 2002)

#### **Section 22-17.5 Inspection**

Upon presentation of proper credentials, any enforcement officer may enter at reasonable times any building, structure or premises in the County of Kauai for the purpose of determining and enforcing compliance with the provision of this article or of any court order issued under this article; and provided further, that an order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted. (Ord. No. 792, October 15, 2002)

#### **Section 22-17.6 Exemption**

The provisions of this article shall not apply to dogs owned by any law enforcement agency and used in the performance of law enforcement work. (Ord. No. 792, October 15, 2002)

#### **Section 22-17.7 Civil Action Not Precluded**

Nothing contained in this article shall preclude any person injured by a dog from bringing a civil action against the owner of such dog pursuant to the applicable provisions of state law. (Ord. No. 792, October 15, 2002)

#### **Section 22-17.8 Severability**

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article which can be given effect without the invalid provisions or applications, and to this end the provisions of this article are severable. (Ord. No. 792, October 15, 2002)